



Crl.RC.No.2404 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2025

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.RC.No.2404 of 2024 and

Crl.M.P.No.18502 of 2024

R.Venkateshwaran

... Petitioner

Vs.

K.Murugarajan

... Respondent

Prayer: Criminal Revision Case filed under Section 438 read with 442 of B.N.S.S. to call for the records and set aside the order dated 19.11.2024 made in Crl.M.P.No.2694 of 2023 in S.T.C. No.708 of 2022 on the file of the Judicial Magistrate, Paramathi.

For Petitioner : Mr.S.Lakshmanasamy

For Respondent : Mr.R.Vivekananthan



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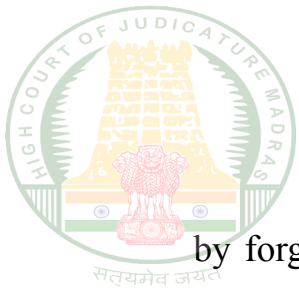
ORDER

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This Criminal Revision Petition has been filed by the petitioner/accused to set aside the order dated 19.11.2024 made in Crl.M.P.No.2694 of 2023 in S.T.C. No.708 of 2022 on the file of the Judicial Magistrate, Paramathi.

2. The case of the petitioner is that the respondent filed a complaint against the petitioner under Section 200 Cr.P.C. for the offence under Section 138 of the Negotiable Instruments Act before the Judicial Magistrate, Paramathi and the same was taken on file in S.T.C. No.708 of 2022 and pending STC, the petitioner filed a petition invoking Section 45 of the Evidence Act in Crl.M.P.No.2694 of 2024 to compare the signature found in the disputed cheque. The said petition was dismissed by the Magistrate by order dated 19.11.2024 on the ground that the petitioner approached the Court belatedly. Aggrieved by the same, the present revision is filed.

3. The learned counsel for the petitioner submitted that the petitioner had not executed the cheque. The respondent stolen two of his cheque leaves and



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by forging his signature, filed the complaint. Therefore, the petitioner filed a petition before the Magistrate invoking Section 45 of the Indian Evidence Act for sending the disputed cheque for expert opinion, whereas the learned Magistrate failed to consider the same and dismissed the petition. Therefore, the present revision is filed.

4. The learned counsel for the respondent submitted that the petitioner had not sent any reply to the statutory notice and also not taken any effective steps immediately after the receipt of the statutory notice. Thereafter, in order to drag on the proceedings, he filed the petition invoking Section 45 of the Indian Evidence Act belatedly at the fag end of the proceedings for sending the cheque for expert opinion. He further submitted that though the petitioner made cross examination for 3 days, he had not put any suggestion regarding the same and thereafter, he filed the said petition very belatedly. Therefore the learned Magistrate rightly dismissed the same. He also submitted that the petitioner had earlier filed two petitions invoking Section 91 Cr.P.C. and the



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same were also dismissed, however, the petitioner did not challenge the same.

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Even otherwise, the Court itself can compare the disputed signature invoking Section 73 of the Indian Evidence Act and there is no need to send the disputed document for expert opinion invoking Section 45 of Indian Evidence Act.

5. Heard both sides and perused the materials available on record.

6. It is seen that the respondent filed a complaint against the petitioner for the offence under Section 138 of the Negotiable Instruments Act in S.T.C. No.708 of 2022 on the file of the Judicial Magistrate, Paramathi. Before filing of the complaint, the respondent had sent a statutory notice to the petitioner and even after the receipt of the statutory notice, the petitioner neither sent any reply nor paid the cheque amount. Therefore, the respondent filed the complaint. Even at the stage of questioning under Section 251 Cr.P.C., the petitioner had taken any defence that his signature has been forged by the respondent. Thereafter, at the stage of P.W.1 cross, the petitioner has taken the said stand for the first time and at the fag end of the proceedings, he filed the



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petition invoking Section 45 of the Indian Evidence Act to compare the disputed signature. Therefore, the Magistrate dismissed the said petition.

7. It is to be noted that issuance of cheque, return/dishonouring of cheque or non sending of reply to the statutory notice are not an offence. However, after receipt of the statutory notice, if the cheque amount is not paid within the stipulated period, then the cause of action would arise for filing complaint.

8. Though sending reply to the statutory notice is not a mandatory one and it may not be fatal to the case of the defence, if at all the cheque of the petitioner was stolen by the respondent and his signature was forged by the respondent, soon after the receipt of the statutory notice, the petitioner ought to have responded immediately and refused the claim of the respondent by way of sending reply. But the petitioner did not send any reply to the statutory notice and failed to utilize the first opportunity given to him.

9. Thereafter, when the Court had given an opportunity to the petitioner

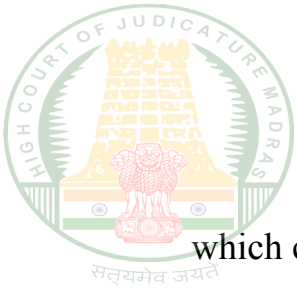


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by way of questioning under Section 251 Cr.P.C., the petitioner had not taken

the said defence and missed the second opportunity which shows that the petitioner was so conscious that the signature found in the cheque is that of his signature. Later during the cross examination of witnesses, for the first time, he took the defence that his cheque was stolen and his signature was forged and belatedly, he filed the petition to send the cheque for expert opinion. Therefore, the trial Court on finding that the petitioner in order to protract the trial filed the petition belatedly, dismissed the same. This Court does not find any reason to interfere with the order passed by the Magistrate and there is no merits in this revision.

10. It is settled proposition of law that the expert opinion is not a conclusive proof. It is obtained only to aid the Court to find out the truth. However, as stated by the learned counsel for the respondent, by invoking Section 73 of Indian Evidence Act, the Judge/Magistrate can also compare the signature if necessary as it is not a thumb impression and it is only a signature



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which can be compared by the Court itself.

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11. With the above observations, this Criminal revision Case is dismissed. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

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To

The Judicial Magistrate,
Paramathi.



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P.VELMURUGAN. J.

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