

Crl.R.C.(MD).No.60 of 2024

'BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 17.03.2025

PRONOUNCED ON : 30.04.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.60 of 2024

and

Crl.M.P.(MD)No.762 of 2024

Abinaya

... Petitioners/Petitioner/ Accused

Vs.

Vanitha

: Respondent/Petitioner/Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of the Criminal Procedure Code to call for the entire records pertaining to the order in Cr.M.P.No.11550 of 2023 in S.T.C.No.168 of 2021 on the file of the Judicial Magistrate Court, Paramakudi, dated 20.12.2023 and set aside the order.

For Petitioner : Mr.M.Kannan

For Respondent : Mr.D.Senthil



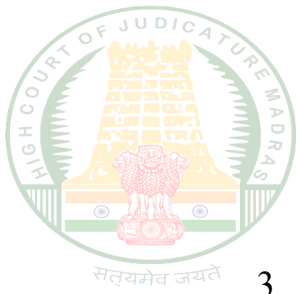
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ORDER

This Criminal Revision is directed against the order passed in Cr.M.P.No. 11550 of 2023 in S.T.C.No.168 of 2021, dated 20.12.2023, on the file of the Court of the Judicial Magistrate, Paramakudi in dismissing the petition filed under Section 45 (wrongly stated as 47) of the Indian Evidence Act.

2. The respondent as complainant filed a private complaint under Section 200 Cr.P.C., against the petitioner/accused for the alleged offence under Section 138 r/w 142 of the Negotiable Instruments Act. When the case was pending for defence evidence, the accused has filed the application allegedly under Section 47 of the Indian Evidence Act for sending the disputed cheque to the Forensic Science Expert for getting opinion to show that the contents of the cheque were not written by the petitioner/accused. The respondent filed a counter statement raising serious objections. The learned Judicial Magistrate, after enquiry, has passed the impugned order dated 20.12.2023 dismissing the said petition. Aggrieved by the dismissal order, the present revision came to be filed.



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3. Regarding the objection with regard to the filing of the petition under Section 47 of the Indian Evidence Act, no doubt, the petitioner ought to have filed the petition under Section 45 of the Indian Evidence Act and Section 47 has no application to the case on hand. But at the same time, mere quoting a wrong provision of law does not disentitle the petitioner from claiming the relief nor preventing the Court from granting the relief.

4. The case of the petitioner is that the petitioner was a tenant in respect of a building owned by the respondent's husband, that the respondent's husband used to take Swift Dzire car bearing Registration No.TN-65-AW-5656 owned by the petitioner very often, that the petitioner after giving her cheques as security for the home loan obtained from Repco Bank, kept the remaining unfilled four cheques bearing Nos.477763, 477765, 477766, 477769 issued by the State Bank of India, Paramakudi branch, in the car dash board. The respondent's husband while taking the car had stolen the said cheques and also a blank signed promissory note and after coming to know about the same, gave an intimation to the bank to stop payment. The complainant, during her cross-examination, has stated that it was only the accused who had written the contents of the cheque, but the petitioner had not filled up anything other than signing the cheque and



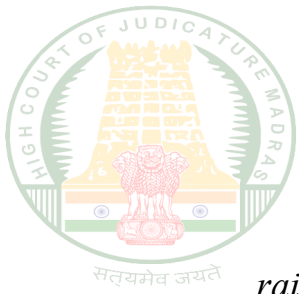
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never issued the cheques to the respondent or her husband. Since the petitioner is having the burden to prove the falsity of the respondent's case, the disputed cheque has to be sent to the Forensic Science Expert so as to ascertain that the content of the cheque were not written by the petitioner and hence, an Advocate Commissioner has to be appointed to take the cheques to the Forensic Science Laboratory and to get an opinion.

5. The respondent has filed a counter statement disputing the petitioner's averments and stated that when a person is admitting that he had affixed the signature in the cheque, then it will be irrelevant as to who had filled up, that the respondent has filed the complaint in the year 2021 and the same is pending for more than 2 years, that when the case was pending for defence side evidence, with an evil intention to cause delay in disposing of the case, the above petition came to be filed and that therefore, the petition is liable to be dismissed.

6. The learned Counsel for the petitioner would rely on a decision of the Hon'ble Supreme Court in ***T.Nagappa Vs. Y.R.Muralidhar*** reported in **(2008)5 SCC 633** and the relevant portion is extracted hereunder:

“7. When a contention has been raised that the complainant has misused the cheque, even in a case where a presumption can be



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raised under Section 118(a) or 139 of the said Act, an opportunity must be granted to the accused for adducing evidence in rebuttal thereof. As the law places the burden on the accused, he must be given an opportunity to discharge it.”

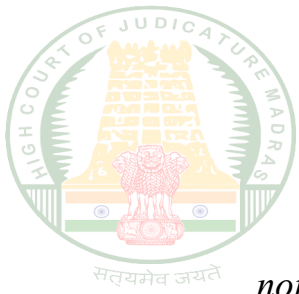
7. The learned Counsel would also rely on the decision of this Court in **K.Sureshkumar Vs. Badhrudheen** in Crl.R.C.No.166 of 2017, dated 24.09.2018, wherein a learned Judge of this Court has observed as follows:

“10.In the present case though the Cheque is not disputed, however, the case of the petitioner is that the Cheque was signed by the petitioner but the other columns were filled by other persons. The decisions cited supra squarely applies to the present case on hand. In view of the contradictory view taken by the petitioner and respondent, it is just and necessary to send the Cheque for Expert opinion.”

8. The learned Counsel for the respondent would rely on some of the decisions of this Court and are as follows:

(i) **2004(5) CTC 84 (P.S.A.Thamotharan Vs. Dalmia Cements (B) Ltd., Dalmiapuram, Trichy):**

Person accused of offence under Section 138, Negotiable Instruments act admitted execution of cheque but claimed that he did



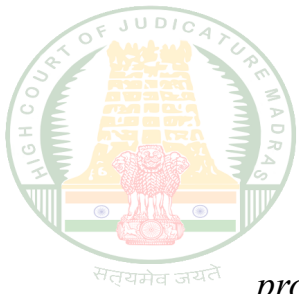
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not fill up blanks in cheque and sought examination of handwriting contained in cheque by handwriting expert – Negotiable Instruments Act does not make in mandatory that blanks in cheques should be written by drawer of cheque alone – Cheque duly signed by drawer of cheque could be written by any one accepting amount – Examination of handwriting is not relevant for purpose of offence under Section 138, Negotiable Instruments Act even if it is written by some one other than drawer once drawer has admitted execution of cheque – Order of Trial Court rejecting application for examination by handwriting expert confirmed.”

(ii) (2012)4 MLJ (Crl.)586 (Babu Vs. Vinayagam):

“9. As per [Section 20](#) of the Negotiable Instruments Act, a holder in due course is authorised or empowered to fill up an instrument so as to make it a negotiable instrument. In this case, the petitioner had admitted the entrustment of the cheques as well as promisory notes in blank and therefore, the respondent/complainant as a holder in due course, is entitled to fill up the cheques and that cannot be questioned by the petitioner/accused. Therefore, the contention of the petitioner that there are two different inks by which the cheques and promisory notes have been filled up will not in any way useful for the petitioner for the purpose of his defence in the proceedings initiated against him under [Section 138](#) of the Negotiable Instruments Act. Even in the reply notice, the petitioner/accused admitted the entrustment of the cheques as well as

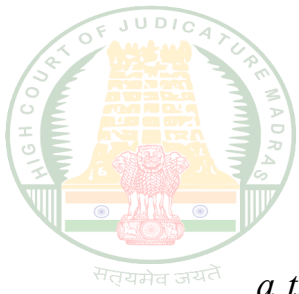


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promisory notes but only pleaded that he intend to repay the cheque amount within a short time. Even in the cross-examination of PW1, a suggestion was made only for repayment of the cheque amount. In this connection, the learned counsel for the petitioner/accused relied on the decision reported in ([T. Nagappa vs. Y.R. Muralidhar](#)) Appeal (Crl) No. 707 of 2008 dated 24.04.2008 wherein the Honourable Supreme Court held that as per [Section 20](#) of the Negotiable Instruments Act only a prima facie right had been conferred upon the holder of the negotiable instruments Act and the same is subject to the conditions mentioned therein. Further, it was held that in the interest of justice, the accused must be given an opportunity to rebut the presumption as well as the case put forth by the complainant. The facts of the case involved in the decision cited supra are different and they cannot be made applicable to the facts of this case. In this case, the petitioner admitted the entrustment, execution or issuance of the cheques as well as promisory notes and he only disputes that the writings made in the instruments namely cheques and promissory notes differ and they were written in two different inks. While so, the decision relied on by the counsel for the petitioner do not lend support to his case.

10. The court below, relying on the unreported decision of this Court in [S. Gopal vs. D. Balachandran](#) Crl.R.C. No.1658 of 2007 dated 22.01.2008 held that if a drawer of a cheque gives authority to the payee or holder in due course or a stranger, for that matter to fill up the cheque signed by him, such an instrument also is valid in the eye of law. There is no bar for the drawer of a cheque to give authority to



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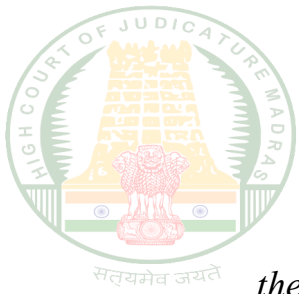
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a third person to fill up the cheque signed by him for the purpose of negotiating the same. Thus, by relying on the decision of this Court mentioned supra, the trial court came to the conclusion that sending the cheques in question as well as the promisory notes to ascertain the person who wrote the contents thereof is unnecessary. Considering the facts and circumstances of the case, I am of the view that the Court below has arrived at such a conclusion correctly and I do not find any reason to interfere with such a finding rendered by the Court below.”

9. The learned Counsel for the respondent would also rely on another order passed in ***Crl.R.C.(MD)Nos.70 to 72 of 2017 dated 05.02.2021*** by me and the relevant passages are extracted hereunder:

“6.The learned Judicial Magistrate by referring to [Section 20](#) of the Negotiable Instruments Act, has observed that [Negotiable Instruments Act](#) permits the holder of the cheque either by himself or through any third party to fill up the blank cheques. It is necessary to refer [Section 20](#) of the Negotiable Instruments Act hereunder for better appreciation;

“Inchoate stamped instruments : Where one person signs and delivers to another a paper stamped in accordance with law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an in complete negotiable instrument, he thereby gives prima facie authority to the holder



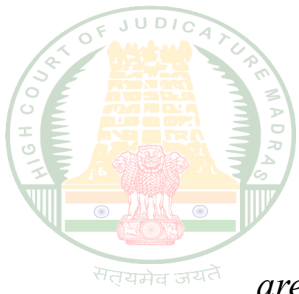
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thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument in the capacity in which he signed the same, to pay holder in due course for such amount; provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount instead of him to be paid to thereunder.”

7. As per [Section 20](#) of the Negotiable Instruments Act, the holder in the due Course has every authority to complete the stamped instruments i.e., blank promissory note and bill of exchange, delivered to him after properly signing therein by the maker of the instruments and as such [Section 20](#) of the Negotiable Instruments Act, will have no any application to the blank cheques issued after signing by the drawer. But, at the same time, there is no law which mandates that the cheque shall be filled up by the drawer himself. Similarly, if a drawer of a cheque gives authority to the payee or holder in due course to fill up the cheque signed by him, then the payee or holder in due course can very well fill up the blank cheque by themselves or through a stranger / third party, as there is no bar for the drawer of the cheque to give authority to the third person to fill up the cheque signed by him for the purpose of negotiating the same.

8. In the present case, according to the petitioner, she has not written the contents of the cheques. As already pointed out, since it is not mandatory for the drawer to fill up the entire instrument by himself, no useful purpose would be served if the disputed cheques



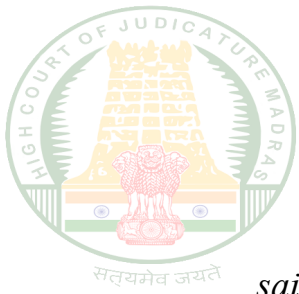
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are sent for expert opinion. Even assuming that the expert gives his opinion that the handwritings found in the cheques are not that of the petitioner's handwriting, that by itself would not advance her case further.”

10. The learned Counsel for the respondent would submit that the petitioner while filing the above petition has practically sought for report that the signature in disputed cheque and the contents therein were done at different times and that the contents were not written by the petitioner. He would rely on a decision of this Court in ***M/s Jambai Hardware Stores represented by its Managing Partner and others Vs. Prakash A.Khanna*** in Crl.R.C.(MD)No.781 of 2022 dated 02.09.2022, wherein, after referring to various decisions would reiterate the legal position that there is no mechanism or scientific method to find out the age of the writing or ink and the relevant portion is extracted hereunder:

“13.It is pertinent to note that as per the directions of the learned Single Judge in [A.Inayathullah](#)'s case, the Assistant Director appeared before the Court and informed that there is no scientific method available anywhere in this State, that there is one institution known as Neutron Activation Analysis, BABC, Mumbai, where there is facility to find out the approximate range of the time, during which, the writings would have been made and he submitted that even such opinion cannot be exact. He further submitted that the



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said Nutron Activation Analysis is confined only to atomic research, the documents relating to prosecutions and other litigations cannot be sent to that institution.

14. On considering the various decisions of this Court and other Courts, this Court in [Kanagaraj Vs. Ramamoorthy](#) in CRP.(MD)No. 601 of 2021 has observed that “ it is very much clear that there is no mechanism or scientific method to find out the age of the writing or ink. But the learned Additional District Judge, without considering the non-availability of any such mechanism, by simply observing that the defendant has to be given an opportunity to prove his defence and no prejudice would be caused to the plaintiff, allowed the petition. Hence, this Court has no hesitation to hold that the impugned order is not good in law and the same is liable to be set aside.”

11. At this juncture it is necessary to refer the judgment of the Hon'ble Supreme Court in ***Bir Singh Vs. Mukesh Kumar*** reported in **2019(4) SCC 197**, wherein the Hon'ble Apex Court has specifically held that subsequent filling in of an unfilled signed cheque is not an alteration and even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under [Section 139](#) of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque



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was not issued in discharge of a debt and the relevant portions are extracted hereunder:

“If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence. A meaningful reading of the provisions of the [Negotiable Instruments Act](#) including, in particular, [Sections 20, 87 and 139](#), makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of [Section 138](#) would be attracted.”

12. In a similar case, the Hon'ble Supreme Court in ***K.Ramesh Vs. K.Kothandaraman*** reported in ***2024 Live Law SC 145***, wherein also there was no dispute that the accused has signed the cheque, but the dispute is with regard to the age of the ink used in making the signature on the cheque and the age of the signature and contents of the cheque and that the accused therein sought forensic opinion to compare the contents of the cheque with the signature of the



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payee. The Hon'ble Supreme Court, following the decision of the Hon'ble Supreme Court in ***Bir Singh Vs. Mukesh Kumar*** reported in **2019(4) SCC 197**, above referred, has concluded that the application filed by the accused before the trial Court was wholly frivolous and that the trial Court had rightly rejected the said petition.

13. In the present case, as rightly observed by the learned Magistrate, though the petitioner has alleged that the disputed cheque was stolen from the petitioner's car dash board by the respondent's husband, she has not given any particulars about the action taken for stealing the cheques nor any other materials to substantiate the said defence. It is pertinent to note that the petitioner has specifically admitted the signature found in the disputed cheque, but is disputing the contents of the cheque.

14. As rightly contended by the learned Counsel for the respondent, it is not mandatory for the drawer to fill up the entire contents of the cheque and as such, no useful purpose will be served, if the disputed cheque is sent for Expert opinion and even assuming for argument sake that the Expert gives his opinion that the writings found in the cheque are not that of the petitioner's writing, that



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by itself would not advance the petitioner's case further. In view of the above, the impugned order dismissing the petition, cannot be found fault with.

15. Considering the stage at which the above petition came to be filed, as rightly contended by the learned Counsel for the respondent, the petitioner has only been attempting to protract the proceedings. Hence, this Court concludes that the Criminal Revision Case is devoid of merits and the same is liable to be dismissed.

16. In the result, the Criminal Revision Case is dismissed. Consequently, the connected Miscellaneous Petition is also dismissed.

30.04.2025

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To

The Judicial Magistrate Court, Paramakudi,



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Pre-Delivery order made in

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