BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.03.2025

Delivered on : 03.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.724 of 2023
and
Crl.M.P.(MD)No. 10005 of 2023

M.Gomathisankar : Petitioner

Vs.

Sumathi : Respondent

Prayer : This Criminal Revision has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records relating to the impugned order, dated 16.06.2023 passed in Crl.M.P.No.4413 of 2023 in S.T.C.No.1616 of 2016 on the file of the learned Judicial Magistrate, Tenkasi and set aside the same.

For Petitioner : Mr.N.Dilip Kumar
For Respondent : Mr.V.Sasi Kumar

O R D E R

The Criminal Revision Case is directed against the order passed in Crl.M.P.No.4413 of 2023 in S.T.C.No.1616 of 2016, dated 16.06.2023 on the file of the learned Judicial Magistrate, Tenkasi, dismissing the petition filed under Section 45 of Indian Evidence Act.

2. Originally one Ajithkumar has filed a private complaint under Section 200 of Cr.P.C., against the petitioner for the offence under Section 138 r/w 142 of Negotiable Instruments Act. Pending complaint, the complainant Ajithkumar had died and hence, his wife has got herself impleaded as legal representative of the complainant and proceeded with the case.

3.The case of the complainant is that the petitioner and the original complainant belonging to the same community were working in the same School for several years; that the petitioner/accused has also been doing real estate and construction business apart from teaching profession; that the petitioner demanded the complainant to advance amount to the tune of Rs.25 lakhs and the complainant, after getting the amount from the various sources, gave the same on 01.05.2016; that the petitioner after getting the amount of Rs.25 lakhs on 01.05.2016, issued three cheques, two cheques for Rs.5 lakhs each drawn on Indian bank, Cheranmahadevi Branch and the third cheque for Rs.10 lakhs drawn at Tamil Nadu Mercantile Bank, Pappakudi Branch; that the petitioner with an intention to cheat the complainant gave an intimation to his bank to stop payment; that when a same was enquired, he refused to give any reply; that when a complaint was sent to the District Superintendent of Police, the petitioner has agreed to arrange necessary funds in his bank account; that the complainant believing his words presented the cheques for collection through his bank State Bank of India, Kizhapavoor Branch, but the same came to be returned for the reason as 'payment stopped by drawer'; that the complainant has then sent a legal notice, dated 08.10.2016, demanding the payment of amount covered by the cheques; that the petitioner has sent a reply notice, dated 26.10.2016 with false and untenable allegations and that since payment was not made, the complainant was constrained to file the above complaint for the offence under Section 138 of Negotiable Instruments Act.

4.The case of the petitioner in the petition filed under Section 45 of Indian Evidence Act is that the petitioner has taken the defence that he borrowed a sum of Rs.5 lakhs on 04.01.2014 and the defacto complainant gave the loan amount with condition to return the same within ten days and asked him to pay Rs.2,000/- per day and after deducting a sum of Rs.20,000/- for ten days, gave a sum of Rs.4,80,000/- and obtained two signed blank promissory notes and two green papers with revenue stamp affixed; that the defacto complainant had stolen the cheque book having blank cheque numbers from 066451 to 066470 and threatened him that he would misuse the same; that the petitioner was forced to file a petition under Sections 5, 6 and 8 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act before the

Principal District Musif Court, Tirunelveli and that the defacto complainant, after coming to know about the filing of the petition, approached him for amicable settlement through mediators and they have entered into a compromise on 09.04.2016 and thereby the original complainant agreed to receive a sum of Rs.1,50,000/- as full and final settlement and obtained Ex.P. 1, 2 and 3 cheques, which were filled by the petitioner as Rs.50,000/- in number and without filling the amount in words and other particulars in the cheques and obtained his signatures in the cheques.

5. It is the further case of the petitioner that a memo was issued to Ajith Kumar for misconduct, and the original complainant, mistakenly believing the petitioner was responsible, requested the Tamil Nadu Mercantile Bank to stop payment on the stolen cheques on 25.02.2016. Similarly, the complainant asked the Indian Bank, Cheranmahadevi, to countermand the three cheques (Ex.P.1 to Ex.P.3). The petitioner issued a legal notice to Ajith Kumar on 25.06.2016, alleging material alteration of the cheques. During cross-examination, P.W.1 expressed no objection to sending the cheques for expert opinion. Given the dispute over the alteration of the cheques, forensic analysis is necessary to determine if '0' was inserted after Rs.50,000/- and whether the cheques were fabricated. The petitioner will suffer irreparable loss, if expert opinion is not called for. The petitioner’s defense is that except

for his signature and the amount in numbers, the other contents were filled without his knowledge or consent. Therefore, appointing an Advocate Commissioner to send the cheques for forensic analysis is essential to ascertain whether the date, drawee's name, amount in words, and signature were written by the same person or different persons.

6.The respondent has taken a stand that the cheques in dispute have been issued by the accused and there is no correction in the amount filled in figures and as such, the cheques cannot be sent for forensic analysis; that the signatures in the cheques have not been disputed by the accused and the signatures have been admitted by the accused; that the petitioner/accused admitted the receipt of money from the complainant and the issuance of cheques to the complainant in Ex.P.13 and that since the above petition has been filed only to drag on the proceedings, the same is liable to be dismissed.

7.The learned Judicial Magistrate, after enquiry, has passed the impugned order, dated 16.06.2023, dismissing the said petition. Challenging the dismissal order the present revision came to be filed.

8. It is pertinent to mention that the petitioner/accused has admitted the signatures found in the cheques under Ex.P.1 to Ex.P.3. It is the specific

contention of the petitioner that he had issued the cheques mentioning the amount of Rs.50,000/- in numbers, but not filled any other contents and that the complainant has inserted '0' after the amount of Rs.50,000/- and thereby committed material alteration and that in order to prove that there was material alteration and also the date, drawee's name and the amount in words are written by the same person or different person, the disputed cheques are to be sent to the forensic expert and to get expert opinion.

9. The learned counsel appearing for the petitioner would submit that even before issuance of pre-complaint notice, the petitioner has sent a legal notice to the complainant, dated 25.06.2016 narrating everything including the material alteration shown by the complainant and other alleged omissions and commissions on the part of the complainant.

10. It is pertinent to note that the petitioner himself has produced the copy of reply notice sent on behalf of the original complainant, dated 04.07.2016, denying and disputing the allegations levelled by the petitioner with regard to the material alteration and other aspects. Thereafter, the original complainant has sent the pre-complaint notice, dated 08.10.2016 demanding the amount covered by the cheques, for which, the petitioner has sent a reply.

11. It is evident from the records that the complaint under Section 138 of Negotiable Instruments Act came to be filed in the year 2016 itself, after exchange of notice between the parties and that the case in S.T.C.No.1616 of 2016 is pending for the past nine years and that the petitioner has entered into appearance in January 2017 itself, after the completion of the complainant side as well as the accused side evidence, when the case was pending for arguments, the petitioner/accused has filed the above petition under Section 45 of Indian Evidence Act, seeking expert opinion.

12. Even according to the petitioner, he has raised the allegations of material alteration and other things in the notice, dated 25.06.2016 and the same came to be reiterated in the reply notice sent in response to the pre-complaint notice of the complainant and despite entering into appearance in the above case in January 2017, he has not chosen to file the petition under Section 45 of Indian Evidence Act at the very beginning or subsequently. Admittedly, the above petition under Section 45 of Indian Evidence Act came to be filed on 13.06.2023, when the case was pending for arguments. The petitioner has nowhere whispered any reason or explanation for the said inordinate delay in filing the said petition.

13.No doubt, the learned counsel for the petitioner would rely on the decision of this Court in the case of ***C.Sonamuthu Vs. R.Barsha Beevin*** reported in ***2013 SCC Online Mad 386***, wherein also the accused has taken a defence of material alteration and when the order of the trial Court in sending the disputed documents to forensic department and for getting the expert opinion, came to be challenged before the High Court, this Court by observing that the accused has to be provided an opportunity to prove their defence, as valuable right of the accused cannot be taken away lightly, dismissed the revision.

> *"36.Ordinarily, it matters small if the name of the payee different and the amounts were filled up on a subsequent point of time, subject to the Proviso of Section 118 of the Negotiable Instruments Act. In view of the specific stand taken by the Respondent/Accused in Crl. M.P No 526 of 2012 (Petitioner) that she issued the Cheques and filled the figure as Rs.50,000/ and that the amount in words were not written by her and that the Cheques her signature and the figure amount of Rs.50,000/- were there, etc, and also that in view of the categorical plea taken by her that the figure of Rs. 50,000/- was changed as Rs 5,50,000/- and other blanks were filled up by the Complainant, (although it IS disputed by the Revision Petitioner/Complainant), this Court on the basis of the facts and circumstances of the case, opines that obviously a plea of material alteration in Ex P1-Cheque was taken by the Respondent/Accused in regard to the figure of Rs.50,000/- purposely changed as Rs.5,50,000/-in order to provide an*

opportunity to the Respondent/Accused to prove her case in the manner known to law and in accordance with law since a valuable right of the respondent/accused cannot be taken away so lightly and does not find any infirmity or illegality in the order of the Trial Court while allowing the Crl.M.P.No.526 of 2013 filed by the respondent/accused as the petitioner to obtain an opinion of the Handwriting and Forensic Scientific Department Expert to find out whether the figure '5' is added before the figure of Rs.50,000/- or not in the original figure of Rs.50,000/- and also to find out whether it is two different types viz., Rs.50,000/- and '5' are separate type. Consequently, the Criminal Revision Petition fails."

14. As rightly pointed out by the learned counsel for the respondent in the above decision's case, the case came to be instituted in the year 2012 as C.C.No.239 of 2012 and the petition under Section 45 of Indian Evidence Act came to be filed in the same year and the petition was taken on file in Crl.M.P.No.526 of 2012 and the impugned order came to be passed on 03.07.2012. But in the case on hand, as already pointed out, though the case came to be taken on file in 2016, the present petition was filed in the year 2023, after the lapse of more than seven years.

15. As already pointed out, according to the petitioner, he alone had written the amount of Rs.50,000/- in numbers in the cheques in dispute. As

rightly contended by the learned counsel for the respondent, the very contention of the petitioner is that he wrote the amount of Rs.50,000/- in numbers, but not in words is very hard to believe. Section 18 of Negotiable Instruments Act addresses situations where the amount to be paid on a negotiable instrument is stated differently in figures and words. It establishes that if there's a discrepancy, the amount expressed in words will be the amount considered to be the amount to be paid. This section clarifies how to determine the correct amount when there's a difference between the numerical and written amount on the instrument.

16. In the present case, as already pointed out, even according to the petitioner, he has written the amount only in figures not in words, but in all the three cheques it has been shown as Rs.5,00,000/- in figures as well as in words. The learned Magistrate has rightly referred the decision of the Hon'ble Supreme Court in ***Bir Singh Vs. Mukesh Kumar*** reported in ***2019 (4) SCC 197***, wherein the Hon'ble Supreme 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 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."

17. 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 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.

18. It is also necessary to refer the decision of this Court in the case of ***Babu Vs. Vinayagam*** reported in ***(2012)4 MLJ (Crl.)586*** and the relevant passage is extracted hereunder :

> "*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 promissory 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 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 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."*

19.In the case on hand also, the petitioner has specifically admitted the signatures found in the disputed cheques, but disputing the contents of the cheque.

20.The learned Counsel for the respondent would submit that when the cheques were sent for collection, they were returned due to 'payment stopped by the drawer,' not because of any alterations or corrections. Indeed, the cheques were returned solely for this reason. Notably, the petitioner/accused summoned the Assistant Manager of Indian Bank, Cheranmahadevi, as D.W. 1, who testified that Ex.P.1 to Ex.P.3 cheques were issued by their bank to the petitioner and were returned for 'stop payment.' During cross-examination, D.W.1 admitted that there were no corrections, alterations, or material alterations in the cheques and that they were not returned due to invalidity.

21. As the respondent's counsel rightly argued, the Bank Manager's admission that there are no alterations in Ex.P.1 to Ex.P.3 cheques undermines the petitioner's case. The counsel would further contend that the petitioner

initially alleged in a notice dated 25.06.2016 that the original complainant stole the cheque book (Nos. 066451 to 066470) from the petitioner's handbag. This allegation was reiterated in a subsequent reply notice. However, in a later reply notice dated 18.04.2022 to Rajiv Kumar and the respondent, the petitioner claimed that he was compelled to issue 20 signed, unfilled cheques to the complainant and another person as security for a loan of Rs.5,00,000/-. The petitioner has failed to provide any explanation for these material contradictions.

22. As the respondent's counsel rightly pointed out, despite alleging that the original complainant stole 20 of his cheque leaves, the petitioner failed to file a complaint with the bank's management or the police authorities, without providing any reason for this inaction. The learned Magistrate noted that the petitioner had suggested to P.W.1 that the stamp paper and the second page of Ex.P.13 were given to one Mayandi for a loan, which P.W.1 denied. However, the petitioner failed to produce any evidence to substantiate this claim or show that Ex.P.13 supports the contents of the cheque.

23. Considering the facts and circumstances of the case, as well as the stage at which the petition was filed, the learned Magistrate rightly observed

that the petitioner is attempting to prolong the proceedings. Given the lack of merit in the petition under Section 45 of the Indian Evidence Act, the impugned order dismissing the petition is justified. This Court concurs with the Magistrate's findings and concludes that the Criminal Revision Case lacks merit and is liable to be dismissed.

24.In the result, the Criminal Revision Case is dismissed and the impugned order, dated 16.06.2023 passed in Crl.M.P.No.4413 of 2023 in S.T.C.No.1616 of 2016 by the learned Judicial Magistrate, Tenkasi, is confirmed. Since the case is pending from 2016 onwards, the learned Judicial Magistrate, Tenkasi, is directed to complete the proceedings and dispose of the case within a period of two months from the date of receipt of copy of tis order.

03.06.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
das

To

1.The Judicial Magistrate, Tenkasi.

2.The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

K.MURALI SHANKAR, J.

das

Pre-delivery order made in
Crl.R.C.(MD)No.724 of 2023
and
Crl.M.P.(MD)No. 10005 of 2023

03.06.2025