

M.Velmuruga Vs. 1.S.Ramesh

M.Velmuruga Vs. 1.S.Ramesh

SooperKanoon Citation : sooperkanoon.com/12944

Court : Chennai

Decided On : Dec-22-2014

Judge : The Honourable Ms.Justice R.Mala

Appellant : M.Velmuruga

Respondent : 1.S.Ramesh

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

22. 12.2014 CORAM THE HONOURABLE MS.JUSTICE R.MALA Criminal Revision Case (MD)No.530 of 2014 and M.P.(MD)No.1 of 2014 M.Velmurugan : Petitioner/Complainant Vs. 1.S.Ramesh 2.R.Asha Devi : Respondents/Accused Nos.1&2 Prayer: Criminal Revision Case is filed under Section 397 r/w Section 401 of the Criminal Procedure Code praying to call for the records relating to the orders passed by the learned Judicial Magistrate No.I, Virudhunagar, in Cr.M.P.No.6688 of 2014 in C.C.No.216 of 2012, dated 20.10.2014 and 25.11.2014 and set aside the same and consequently, dismiss the application. !For Petitioner : Mr.N.Dilip Kumar :

ORDER

The present revision has been filed challenging the impugned order dated 20.10.2014 and 25.11.2014 made in Cr.M.P.No.6688 of 2014 in C.C.No.216 of 2012, on the file of the learned Judicial Magistrate No.I, Virudhunagar.

2. At the time of admission, arguments advanced by the learned counsel for the petitioner were heard in length.

3. The learned counsel for the petitioner would submit that the petitioner herein, as a complainant, has filed a complaint against the respondents herein/Accused Nos.1 and 2, before the learned Judicial Magistrate No.I, Virudhunagar, for the offences punishable under Section 138 and 142 of Negotiable Instruments Act and during the pendency of the complaint, after 313 of Cr.P.C., questioning, the respondents herein/Accused Nos.1 and 2 filed an application in Cr.M.P.No.6688 of 2014 under Section 45 of Evidence Act to send the documents for comparing the signatures found in the disputed cheque with the admitted signature. The Trial Court, by its order dated 20.10.2014, has allowed the application with a direction to produce contemporaneous document for comparison with the disputed signature and adjourned the matter to 25.11.2014 and on that day, a certified xerox copy of the sale deed dated 30.03.2011 has been produced and on that basis, the Trial Court has allowed the application for sending the document to Forensic Department for comparison of the admitted signature found in the said sale deed with the disputed signature found in Ex.P.9, cheque dated 08.10.2012. Aggrieved over the same, the petitioner preferred the present revision.

4. Assailing the impugned order, the learned counsel for the petitioner would further submit that the original sale deed has not been filed and a xerox copy of the sale deed obtained from the Registration Department alone has been filed and hence, that cannot be looked into. He would also submit that after receiving statutory notice, the accused have not given any reply and during the cross-examination, even though they disputed the same, they kept quiet all along and only when the matter was posted for defence evidence, the application has been filed after six hearings and hence, the application was filed belatedly. He would submit that on 08.10.2012 his wife, who is the second accused, has given a letter, which was marked as Ex.P.5 and the signature found in the said document was admitted by the accused. The learned counsel prayed that the said document may also be sent to Forensic Department along with the disputed document for comparison. Hence, he prayed for an appropriate order.

5. Considering the submissions made by the learned counsel for the petitioner and on a perusal of the typed-set of papers, it is seen that the petitioner herein, as a complainant, filed a complaint against the respondents/Accused Nos.1 and 2 for the offences punishable under Sections 138 and 142 of Negotiable Instruments Act stating that on 10.07.2012 the first accused has borrowed a sum of Rs.6,25,000/- for improving his business and executed a promissory note on the same day and in spite of repeated demands by the petitioner/complainant, to discharge the liability, the first accused issued a cheque bearing No.982693, dated 08.10.2012 for a sum of Rs.3,00,000/- drawn on Tamil Nadu Mercantile Bank Ltd., Sivakasi and that has not been disputed. The second accused also issued a cheque bearing No.047611, dated 08.10.2012 for a sum of Rs.3,25,000/- drawn on ICICI Bank, Sivakasi. Both of them have also given the letters acknowledging the aforesaid debt and issuance of the cheques. When the cheques were presented for encashment, the same were returned as "funds insufficient" and after issuance of statutory notice, he preferred a complaint. According to the learned counsel, the second cheque issued by the wife of the first accused alone has been disputed. Admittedly, the delay in preferring the application under Section 45 of Evidence Act alone is not a reason for dismissing the application. Similarly, non-issuance of reply notice for statutory notice also is not a reason. But, however, it was fairly conceded that during the examination of the defence witness, the respondents herein/accused are disputing the signature of the second accused. Hence, it is the duty of the petitioner/complainant to prove that the cheque issued by the wife, the second accused herein is belonging to her. It is an admitted fact that after 313 of Cr.P.C., questioning, when the matter was posted for defence evidence, after obtaining six adjournments, the accused have come forward with the application and at that time, the Trial Court, after considering the decisions of the Apex Court and this Court, has allowed the application. Admittedly, the cheque is dated 08.10.2012. According to the petitioner's counsel, the letter dated 08.10.2012 sent by the second accused acknowledging the debt and issuance of cheque was marked as Ex.P.5. Therefore, I am of the view that interest of justice would be sub-served, in case a direction is issued to send the said letter also for comparison with the disputed signature.

6. Accordingly, the Trial Court is directed to send the letter dated 08.10.2012 sent by the second accused, which was marked as Ex.P.5 to Forensic Department for the purpose of comparing the same with the disputed signature found in the cheque, which was marked as Ex.P.9 along with the registered sale deed dated 30.03.2011.

7. Since the learned counsel wants an early disposal of the case, the Trial Court is directed to complete the above said exercise, within a week from the date of receipt of a copy of this order and to obtain an Expert opinion within a period of one month and on receipt of such report, the Trial Court is directed to dispose of the case in C.C.No.216 of 2012, on merits and in accordance with law, within a period of two months thereafter.

8. The revision is disposed of with the above modification. Consequently, the connected miscellaneous petition is closed. 22.12.2014 Index:Yes/No Internet:Yes/No To The Judicial Magistrate No.I, Virudhunagar. R.MALA,J SML Order made in Criminal Revision Case (MD)No.530 of 2014 Dated:

22. 12.2014

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com