

Babu Vs. Vinayagam

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Court : Chennai

Decided On : Oct-29-2012

Reported in : 2012(4)MLJ(Cr)586

Judge : B. Rajendran

Appeal No. : Criminal Revision Case No. 431 of 2012

Appellant : Babu

Respondent : Vinayagam

Advocate for Pet/Ap. : For the Petitioner: S. Sounthar, Advocate. For the Respondent: R. Rajarajan, Advocate.

Judgement :

(Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C. against the order dated 07.03.2012 made in C.M.P. No. 853 of 2012 in C.C. No. 120 of 2011 on the file of the Judicial Magistrate (Fast Track Court), Tiruvannamalai.)

This Criminal Revision Case is filed by the petitioner aggrieved by the order dated 07.03.2012 passed in CMP No. 853 of 2012 in C.C. No. 120 of 2011 by which the petition filed by the petitioner under Section 45 of Indian Evidence Act was dismissed.

2. The respondent/complainant has filed C.C. No. 120 of 2011 under Section 138 of the Negotiable Instruments Act contending that on 30.10.2010 the accused borrowed a sum of Rs.35,000/- and issued a cheque No. 600975 dated 29.11.2010 drawn on ICICI Bank, Tiruvannamalai Branch as well as a promisory note. Further, on 20.11.2010, the accused borrowed further sum of Rs.50,000/- for which he issued a cheque No.057200 dated 11.12.2010 drawn on ICICI Bank, Tiruvannamalai Branch as well as a promisory note. Thus, the accused had borrowed a total sum of Rs.35,000/-. On the request of the accused, the complainant presented the cheques for collection, but both the cheques were dishonoured on the ground that the account has been closed long back. After issuing a statutory notice on 29.12.2010 to the accused, the complainant filed the complaint under Section 138 of the Negotiable Instruments Act.

3. Pending the calander case, the petitioner/accused filed C.M.P. No. 853 of 2012 under Section 45 of the Indian Evidence Act praying to send the Cheques for comparision to ascertain as to (i) whether the writings in the two cheques as well as the promisory notes have been written by one and the same person (ii) whether the ink by which the cheques were signed in both the cheques as well as the writings thereon as well as the promisory note have been written by one and the same ink and (iii) to ascertain the age of the ink. According to the petitioner/accused, even though he had signed the cheques as well as the promisory notes, the contents thereon have been filled by two different persons in the two cheques as well as promisory notes and therefore, it has to be ascertained as to who was the person who had filled the cheques as well as the promisory notes, through an expert. This said application filed by the petitioner was dismissed by the Court below against which the present Criminal Revision Case is filed.

4. The learned counsel appearing for the petitioner would contend that as per the version of the respondent/complainant, the contents in both the cheques as well as the promisory note were written by him, whereas, the writtings in both the cheque and the promisory note differ and therefore it has to be ascertained as to whether it was the petitioner who had filled up both the cheques as well as the promisory note or by some other person. This is very significant to prove that the

petitioner/accused had issued the cheques in blank, however, the court below erroneously dismissed the petition without assigning any valid reasons.

5. On the other hand, the learned counsel for the respondent/ complainant would contend that the petitioner had admitted the issuance of the cheques as well as the promisory note and the execution of the same. Therefore, it is unnecessary for the Court below to direct the forensic experts to find out as to who was the person who filled up the cheques and promisory notes. Further, the petitioner never denied the execution of the cheques or his signature in the cheques as well as the promisory note. As per Section 20 of the Negotiable Instruments Act, even a holder in due course can fill up the cheque and it is legally permissible. When the petitioner had admitted the entrustment of the cheques as well as promisory notes, it is not open to him to file the petition under Section 45 of the Indian Evidence Act to compare the writings in the cheque and the promisory note. Therefore, the Court below is right in rejecting such a prayer sought for by the petitioner and he prayed for dismissal of the Criminal Revision Case.

6. I heard the counsel for both sides and perused the materials placed on record. According to the petitioner/accused, he issued the cheques in blank as a collateral security for the due payment of the loan amount received by him from the respondent/complainant and also signed the promisory notes. When the documents have been presented in the Court, he could find two different writings in both the cheques as well as promisory notes by using two different types of ink. Therefore, he would contend that the cheques as well as promisory notes have been filled up by some other person other than the respondent/complainant. Thus, in order to find out as to who was the person who filled the cheques as well as promisory notes, it is just and necessary to send the cheques as well as promisory notes to forensic sciences authorities especially when the defence of the petitioner is that he had issued the cheques in blank. Thus, the only point raised by the petitioner is that even though the cheques as well as promisory notes were signed by him, the contents thereof have not been filled up by him and unless this is established, the petitioner could not prove his defence that the cheques were issued in blank. Further, there are discrepancies in the filling up of the cheques and promisory notes as there are two different writings with two different ink.

According to the petitioner, the cheque was entrusted to the respondent as a security for the due repayment of loan, but it was misused by him. As per Section 73 of the Indian Evidence Act, the Court itself can compare the admitted and disputed signature, but it is better to obtain the opinion of the forensic experts.

7. When we analyse the evidence available on record, the petitioner/ accused had categorically admitted the entrustment of the cheque as well as promisory notes, signing or execution of the cheques and the promisory notes in favour of the respondent/complainant. The transaction between the complainant and the accused is not seriously disputed by the accused. The only contention of the petitioner is that the cheques as well as the promisory notes have been signed by him in blank as a collateral security. Therefore, it is very clear that the petitioner admits the issuance, entrustment or execution of the cheques as well as promisory note in question to the respondent/complainant.

8. Section 20 of the Negotiable Instruments Act deals with the right of the holder in due course, which reads as follows:-

20. Inchoate stamped Instruments:- Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder 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 any 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 intended by him to be paid thereunder.

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 be 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 intends 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 promisory notes differ and they were written in two different inks. While so, the decision relied on by the counsel for the petitioner does 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.

11. As far as comparison of age of the ink sought for by the petitioner/ accused by the forensic experts, such a prayer cannot be countenanced in view of the decision rendered by this Court in **(R. Jagadeesan vs. N. Ayyasamy and another) (2010 (1) CTC 424** which was also followed by this Court in various other decisions including an unreported decision of this Court in ***Crl.R.C. (MD) No. 265 of 2012, dated 18.07.2012*** wherein it was held that the facility to ascertain the age of the ink of the signatures found in the cheques, is not available in Tamil Nadu and that earlier, the matters have been referred to Andhra Pradesh, in fact, now, a report has been sent by the Assistant Director, Central Forensic Laboratory, Andhra Pradesh to the effect that as of now, such facility is not available in India, therefore, there is no possibility to ascertain the age of the ink of the signatures found in the cheques.

12. The court below pointed out that when the petitioner admitted his signature in the cheques as well as the promisory note, there is no necessity to send the cheques in question to forensic experts for comparison. Even in the reply given by the petitioner to the statutory notice sent by the respondent or during the course of trial, the petitioner/accused never disputed the execution or entrustment or issuance of the cheques and promisory notes in favour of the respondent/complainant and therefore, the Court below is right in dismissing the petition filed by the petitioner under Section 45 of the Indian Evidence Act. I am fully in agreement with the conclusion arrived at by the Court below and I do not find any reason to interfere with the same.

13. In the result, the Criminal Revision Case is dismissed confirming the order dated 07.03.2012 made in C.M.P. No. 853 of 2012 in C.C. No. 120 of 2011 on the file of the Judicial Magistrate (Fast Track Court), Tiruvannamalai. Consequently, connected miscellaneous petition is closed.