

(2010) 12 MAD CK 0100

Madras High Court

Case No: Criminal R.C. No. 851 of 2007

R. Subburaman

APPELLANT

Vs

Jothi Niraimaathi

RESPONDENT

Date of Decision: Dec. 13, 2010

Acts Referred:

- Evidence Act, 1872 - Section 45, 73
- Negotiable Instruments Act, 1881 (NI) - Section 138

Citation: (2011) 4 CivCC 786 : (2011) 3 RCR(Civil) 731 : (2011) 3 RCR(Civil) 731 : (2011) 3 RCR(Criminal) 573

Hon'ble Judges: K.B.K. Vasuki, J

Bench: Single Bench

Advocate: B. Arul, for the Appellant; N.S. Sivakumar, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K.B.K. Vasuki, J.

The criminal revision petition is filed against the order dated 04.05.2007 made in C. C. No. 127 of 2005 thereby dismissing the application filed by the petitioner/accused u/s 73 of the Indian Evidence Act to refer the disputed cheque to the forensic expert to give opinion about the age of the disputed writing in the cheque.

2. The defence raised by the petitioner accused in the proceedings initiated for the offence u/s 138 of the Negotiable Instruments Act is that the cheque with his signature and date is issued under different circumstances and not under the circumstance as averred in the complaint and in the event of the document being sent to expert to get an opinion about the age of the disputed contents of the cheque and his signature and date admitted by him, the same would disprove the theory as put forth by the respondent/complainant. The trial Court dismissed the petition on the ground that the petitioner having admitted his signature in the

cheque is estopped from raising such plea and the plea is taken only to protract the proceedings. The correctness of such order is challenged in this revision.

3. The learned counsel for the petitioner herein by relying upon the judgment reported in 2007 (1) R.C.R.(Criminal) 311 : 2007 (1) R.A.J. 68 : 2007 (1) Crimes 106 (SC) Kalyani Baskar v. M.S. Sampornam sought to question the correctness of rejection order passed by the lower Court.

4. Whereas the learned counsel for the respondent/complainant has by relying upon the judgments reported in 2008 (4) CTC 419, A. Jesudhasan v. M. Gopi, 2008 (2) CTC 464, N. Ayyasamy v. S.K. Chinnasamy; 2010 (5) R.C.R.(Criminal) 702 : (2009) 2 MLJ (Cri) 586 V. Srinivasan v. E.S. Gunasekar, 2008 (2) R.C.R. (Criminal) 466; 2008 (2) R.C.R.(Civil) 581: 2008 (1) CTC 491: (AIR 2008 Mad 1300 (NOC), S. Gopal v. D. Balachandran, [R. Jagadeesan Vs. N. Ayyasamy and Another](#), : [S. Gopal Vs. D. Balachandran](#), sought to justify the order under challenge on the ground that different defence is taken at different stages by the accused and request as made in the petition cannot be considered at such belated stage and having admitted the signature, no expert opinion can be sought for to analyse the age of the ink used therein and no such expert is available in terms of the Section 45 of Indian Evidence Act who shall be competent to examine the same scientifically and to offer his opinion.

5. It is true that the Supreme Court in the judgment cited on the side of the petitioner is pleased to observe that the presumptions that shall be raised under Negotiable Instruments Act is rebuttable presumption and the accused is entitled to rebut the same by relying on the materials available and if the cheque in question would furnish good materials to rebut the case of the complainant, the accused should be given ample opportunity to do so and if such an opportunity is denied to the accused, it amounts to denial of fair trial. In the said case the signature in the cheque was denied and accused sought for send the document for expert opinion and when such opportunity was denied to the accused the Supreme Court is pleased to observe as referred to above. Whereas in the present case, the signature is admitted and the opinion sought for is only with regard to the age of the writing both disputed and admitted in the cheque in question. In that event, this Court is of the opinion that the judgments cited on the side of the respondent particularly the latest judgment of the High Court reported in [R. Jagadeesan Vs. N. Ayyasamy and Another](#), , : (AIR 2010 Mad 796) 762 V. Makesan v. T. Dhanalakshmi are more applicable.

6. It may be true that the power of the Court to send the document in question for expert opinion even at the very belated stage is upheld by the Supreme Court in the judgment cited on the side of the petitioner. Such power should be as observed by the Learned Single Judge of our High Court exercised only after ascertaining the availability of the expert in terms of Section 45 of Indian Evidence Act. The learned single Judge has in the latest judgment above referred to taken so much of pain to ascertain the availability of one such expert and has even summoned the head of

the Forensic Science Department and on the basis of the statement of such official arrived at a conclusion that no expert is available as of now to give one such opinion scientifically and rejected the request of the petitioner/accused therein on the ground of non availability of the expert. In view of such position, in the event of any order being passed in favour of the petitioner by this Court would be only an exercise in futile and serves no purpose and the order of the lower Court does not hence on different ground call for any interference.

7. In the result, the criminal revision is dismissed with direction issued to the lower Court to dispose of the main case as expeditiously possible as per law. Consequently, the connected miscellaneous petitions are closed.