(2012) 11 MAD CK 0249

Madras High Court (Madurai Bench)

Case No: Criminal R.C. (MD) No''s. 378, 379 and 380 of 2012 and M.P. (MD) No''s. 1, 1 and 1 of 2012

A. Dhinakar — APPELLANT

Vs

I. Kezhson — RESPONDENT

Date of Decision: Nov. 21, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 243, 243(2), 313, 482
- Evidence Act, 1872 - Section 114, 4, 45, 45A, 93
- Negotiable Instruments Act, 1881 (NI) - Section 118, 118(a), 138, 139, 140

Citation: (2013) 1 RCR(Civil) 859 : (2013) 1 RCR(Criminal) 901

Hon'ble Judges: M. Venugopal, J

Bench: Single Bench

Advocate: M.P. Senthil, for the Appellant; G. Prabhu Rajadurai, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M. Venugopal, J.

The petitioner/Accused has filed Criminal Revision Case (MD) No. 378 of 2012 as against the order dated 22.8.2012 in Cr. M.P. No. 45(A) of 2012 in C.C. No. 1 of 2012 passed by the Learned Judicial Magistrate (Fast Track Court) No. II, Nager coil in dismissing the petition filed u/s 45-A of the Indian Evidence Act to send the cheque for ascertaining the age of the ink in signature, other contents in the cheque and number of pens used for filling in it by an expert of Forensic Science. The petitioner/accused has filed Criminal Revision Case (MD) No. 379 of 2012 as against the order dated 22.8.2012 in Cr.M.P. No. 46(A) of 2012 in C.C. No. 2 of 2012 passed by the Learned Judicial Magistrate (Fast Track Court) No. II, Nagercoil in dismissing the petition filed u/s 45-A of the Indian Evidence Act to send the cheque for ascertaining the age of the ink in signature, other contents in the cheque and

number of pens used for filling in it by an Expert of Forensic Science.

2. The petitioner/Accused has filed Criminal Revision Case (MD) No. 380 of 2012 as against the order dated 22.8.2012 in Cr. M.P. No. 47 of 2012 in C.C. No. 3 of 2012 passed by the Learned Judicial Magistrate (Fast Track Court) No. II, Nagercoil in dismissing the petition filed u/s 45-A of the Indian Evidence Act to send the cheque for ascertaining the age of the ink in signature, other contents in the cheque and number of pens used for filling in it by an expert of Forensic Science.

3. The Learned Judicial Magistrate (Fast Track Court) No. II, Nagercoil, while passing the orders in Cr. M.P. Nos. 45(A)/12, 46(A)/12 and 47/12 respectively on 22.8.2012 has inter alia observed that the Petitioner/Accused has been given fair opportunities at the initial stage to raise his pleas mentioned in the petitions praying for the relief of obtaining an opinion of the Hand-Writing Expert in the private complaint and further that he has failed to avail all the fair opportunities in Cr. M.P. No. 47 of 2012 in C.C. No. 3 of 2012 by virtue of an order dated 22.8.2012 without adverting to the scope and ambit of Section 45 of the Indian Evidence Act having regard to the very evidence of the Respondent viz., P.W. 1.

4. It is the further contention of the Learned Counsel for the petitioner that the Learned Judicial Magistrate has not adverted about the specific case of the respondent/Complainant in his evidence as P.W. 1 to the effect that the entire cheque has been filled up and signed by the petitioner with the very same ink in his presence in the year 2009 which has been disputed by the Petitioner. Therefore, in view of the evidence of P. W. 1, it is very much necessary to elicit the said fact and the alleged cheque is to be sent for obtaining an expert opinion necessarily.

5. The Learned Counsel for the revision petitioner projects an argument that the petitioner/Accused has not sent any reply to the notice issued by the respondent/Complainant and in Law, mere failure to reply to the notice would not vitiate the defence of the accused, which fact has not been borne in mind by the Learned Judicial Magistrate, while dismissing the Criminal Miscellaneous Petitions filed by the petitioner.

6. Proceeding further, the Learned Counsel for the petitioner contends that the trial Court has dismissed the Criminal Miscellaneous Petitions in question without adverting to the ingredients of Section 118 of the Negotiable Instruments Act which speaks of presumption, which is a rebuttable one. As such, the petitioner/Accused ought to be provided with sufficient opportunity in order to substantiate his plea and to disprove the case of the respondent/Complainant.

7. Advancing his arguments, the Learned Counsel for the petitioner/Accused brings it to the notice of this Court that necessity for filing of the Criminal Revision Petitions 45(A) of 2012, 46(A) of 2012 and 47 of 2012 have arisen subsequent to the letting in of the evidence of P.Ws. 1 and 2 and in deed, the said Miscellaneous Petitions have been filed prior to the examination of the defence witnesses. Unfortunately, these

vital aspects have not been taken into consideration by the trial Court when it dismissed the Criminal Miscellaneous Petitions.

8. Lastly, it is the submission of the Learned Counsel for the petitioner/Accused that the trial Court has incorrectly dismissed the Criminal Miscellaneous Petitions 45(A) of 2012 in C.C. No. 1 of 2012, 46(A) of 2012 in C.C. No. 2 of 2012 and 47 of 2012 in C.C. No. 3 of 2012 without adverting to the scope and purport of Section 243 of the Code of Criminal Procedure.

9. To lend support to the contention that the dismissal of the Criminal Miscellaneous Petitions 45(A) of 2012 in C.C. No. 1 of 2012, 46(A) of 2012 in C.C. No. 2 of 2012 and 47 of 2012 in C.C. No. 3 of 2012 by the trial Court through its order dated 26.3.2012 on the ground that it is a belated one is not valid in law, the Learned Counsel for the Petitioner/Accused cites the decision of this Court in P.R. Ramakrishnan Vs. P. Govindarajan wherein it is observed thus:

It is pertinent to note that the Honourable Supreme Court in the latest decision in Mrs. Kalyani Baskar Vs. Mrs. M.S. Sampornam, held as follows:

Section 243(2) is clear that a Magistrate holding an enquiry under the Cr.P.C. in respect of an offence triable by him does not exceed his powers u/s 243(2) if, in the interest of justice, he directs to send the document for enabling the same to be compared by a hand-writing expert because even in adopting this course, the purpose is to enable the Magistrate to compare the disputed signature or writing with the admitted writing or signature of the accused and to reach his own conclusion with the assistance of the expert. As noticed above, Section 243(2) Cr.P.C., refers to a stage when the prosecution closes its evidence after examining the witnesses and the accused has entered upon his defence.

10. Also, in the aforesaid decision, at page 1299, in paragraph 9, it is held as follows:

I am of the considered view that the above principle laid down by the Apex Court in the decision cited supra is squarely applicable to the facts of the present case and the question involved in this matter and as such I am inclined to allow the revision petition and the order passed by the learned Magistrate dated 3.1.2006 is set aside. It is also made clear that the learned Magistrate shall send the disputed cheque dated 15.6.2004 for comparing the same with the admitted signature of the petitioner/accused, in the event of the petitioner producing the relevant documents either by way of an affidavit or other form of document containing the signature of the petitioner as of now.

11. He also seeks in aid of the decision of the Honourable Supreme Court in Ms. Kalyani Baskar v. Ms. M.S. Sampporanam (supra), wherein, the Honourable Supreme Court as among other things observed that:

Adducing evidence in support of the defence is a valuable right and that the denial of that right means denial of fair trial.

12. Furthermore, in the said decision, it is also observed that "the Magistrate should have granted the request to send the cheque for opinion of Handwriting Expert to ascertain the genuineness of signature on it unless, he considered that the object of the accused was vexation or delaying the criminal proceedings." Moreover, it is held that "the accused was entitled to rebut the case of the complainant and that the cheque on which complainant relied upon for initiating the criminal proceedings against the accused would furnish good material for rebutting that case."

13. The Learned Counsel for the petitioner draws the attention of this Court to the decision of the Honourable Supreme Court in T. Nagappa Vs. Y.R. Muralidhar, Recent Apex Judgments (R.A.J.) 592 : (2008) 5 SCC 633, at page 634, whereby and whereunder, the Honourable Supreme Court has observed that

What should be the nature of evidence is not a matter which should be left only to the discretion of the Court and further, it is the Accused who knows how to prove his defence and also that the Court being the master of the proceedings must determine as to whether the application filed by the Accused in terms of Section 243(2) of Cr.P.C., is bona fide or not or whether thereby he intends to bring on record a relevant material.

14. That apart, in the said decision, it is also held by the Honourable Supreme Court that:-

But ordinarily an accused should be allowed to approach the Court for obtaining its assistance with regard to summoning of witnesses etc.

15. By passing the impugned orders of dismissal dated 26/3/2012 in Cr.M.P. No. 45(A) of 2012 in C.C. No. 1 of 2012, Cr.M.P. No. 46(A) of 2012 in C.C. No. 2 of 2012 and Cr.M.P. No. 47 of 2012 in C.C. No. 3 of 2012, the trial Court has deprived the petitioner/Accused his right to get fair trial, the Learned Counsel for the petitioner/Accused banks on the decision of this Court in R. Lakshmikanthan Vs. K. Senthilkumar, wherein it is observed as under:

An accused who disputes his signature in a cheque in a proceeding u/s 138 of the Negotiable Instruments Act has a right to rebut the case of complainant by getting hand writing expert opinion on the said signature of the disputed cheque and any denial of such right amounts to denial of fair trial.

16. The Learned Counsel for the petitioner/Accused relies on yet another decision of this Court in A. Sivagnana Pandian Vs. M. Ravichandran , wherein it is held as follows:

Since various scientific avenues are available for finding out the age of the ink in a document, it must be subjected to tests as suggested by various scientists. This Court follows the ratio in the decisions in Ms. Kalyani Baskar v. Ms. M.S. Sampporanam (supra), case and T. Nagappa v. Y.R. Muralidhar (supra), case above, and direct to refer the disputed document to such examination in order to provide

an opportunity to the accused, when a good material is available, to rebut the presumption as per law, by non-destructive method in this regard.

17. Added further, in aforesaid decision, at page 596, it is held hereunder:

Latching the opportunity to the accused in the attempt at the stage of rebutting the presumption u/s 118(a) and 139 of the Negotiable Instruments Act is not at all fair trial and every opportunity shall be extended to the accused to establish his defence.

18. Apart from the above decision, the Learned Counsel for the Petitioner cites the following defence:

(i) In the decision in A. Krishnan Vs. S. Marimuthu it is held that

Though the petitioner had not caused reply to the statutory notice or entered the witness box, he has succeeded in discharging the burden cast upon him u/s 139 of the Negotiable Instruments Act by preponderance of probabilities.

Also, it is held that:

It would be proper to infer that the petitioner has discharged the burden cast upon him u/s 139 of the Negotiable Instruments Act by preponderance of probabilities and such is the case, we find no proof or any effort by the respondent to prove the debt and further, where the onus stands shifted and the complainant fails to prove the debt, the complaint must fail" and resultantly, the Criminal Revision Case has been allowed.

(ii) In the decision in P. Gnanambigai Vs. S. Krishnasamy and The State of Tamil Nadu, at special page 43, this Court has inter alia held that

The prosecution failed to prove the case as pleaded in complaint. Such mere failure of Accused to reply notice and to enter witness box will not affect the merit of the defence of the accused.

(iii) In the decision in D. Karthikeyan Vs. M. Selvaraj, , at special page No. 68, this Court has held that "Mere fact that no reply was issued to statutory notice, will not amount to admission of the case of the Complainant."

(iv) In the decision in A. Devaraj Vs. Rajammal, at special page No. 12, in paragraph Nos. 13 to 15, this Court has held as follows:

13. Since the learned Magistrate has dismissed the Application based on the earlier judgment, I am of the considered view that when there is facility available, a fair trial requires that a chance must be given to the Accused/Petitioner as he has taken a definite stand that the cheque was issued to a different person in the year 1998-1999, which has been used by the Complainant in the year 2004. However, as observed in the order dated 2.13.2010 in C.R.P. (PD) No. 1475 of 2010, an admitted signature of the petitioner of the same year should also be sent for comparison.

14. Therefore, the Criminal Original Petition is allowed and the order passed by the learned Additional District and Sessions Judge, Gopichettypalayam in Crl. R.C. No. 37 of 2008 dated 10.11.2009 and learned Judicial Magistrate, Sathyamangalam in C.M.P. No. 3579 of 2007 in C.C. No. 595 of 2004 dated 2.5.2008 are set aside.

15. The revision petitioner is directed to submit his admitted signature as stated above within a period of two weeks from the date of receipt of a copy of this order before the lower Court. The lower Court is directed to send both the documents to the Central Forensic Science Laboratory, Directorate of Forensic Science as stated above. The lower Court is directed to fix the remuneration to the Advocate Commissioner and also for the expenses for comparison. If the Revision Petition fails to produce the admitted signature for comparison as stated above within the stipulated period, the revision petitioner is not entitled to ask for sending the documents for comparison. Consequently, the connected M.Ps are closed.

(v) In the decision in Chandran Udayar Vs. Kasivel, it is held that

The opinion of Hand-Writing Expert is relevant but not conclusive and further, it is observed that the evidence of Hand Writing Expert is to be corroborated by other evidence and that it is the duty of the Court to come to its own conclusion with the assistance of an expert opinion.

19. Conversely, it is the submission of the Learned Counsel for the respondent/Complainant that Criminal Miscellaneous Petition Nos. 45(A) of 2012 in C.C. No. 1 of 2012, Cr. M.P. No. 46(A) of 2012 in C.C. No. 2 of 2012 and Cr. M.P. No. 47 of 2012 in C.C. No. 3 of 2012 have been filed by the petitioner/Accused before the trial Court, after the examination of witnesses P.Ws. 1 and 2 and indeed, the evidence of the respondent/Complainant has been closed on 29.4.2011 and the matter has been posted for examination of defence witnesses on 19.5.2011 and that the petitioner/Accused has taken fifteen adjournments to let in evidence his side but during this interregnum, he has not filed the applications for sending the cheques in issue for obtaining an ex parte opinion as regards the age of the ink in signature, other contents of, the cheque and number of pens used etc.

20. Expatiating his contentions, the Learned Counsel for the respondent/Complainant contends that the petitioner/Accused has not issued any reply notice to Exhibit P-5 Notice dated 17.4.2010 issued by the respondent/Complainant and when the petitioner/Accused has admitted his signature in the cheques, then filling up of the cheques is not relevant for deciding the controversies/disputes in issue.

21. The Learned Counsel for the respondent/Complainant draws the attention of this Court to the evidence of P.W. 2 (Bank Manager) that who has admitted that the cheques are in two different inks and further, he has stated that he could not say who has written the cheques and in fact, the cheques have been issued in the year 1999 and presented in the year 2004 (after a lapse of five years).

22. The Learned Counsel for the respondent/Complainant takes a plea that for construction of College, the cheques in question have been issued and both parties agree in this regard and also that an expert cannot pin-pointedly say whether cheques have been given on 15.10.2009 or otherwise.

23. Continuing further, it is the contention of the Learned Counsel for the respondent/Complainant that the petitioner/Accused has not questioned the age of the ink etc., at the earliest point of time and since the proceedings initiated u/s 138 of the Negotiable Instruments Act are quasi-criminal in nature. It is incumbent on the part of the petitioner/Accused to suggest his defence and more over, no specific question has been put to P.W. 2 (Bank Manager) on what day, the cheque books have been issued.

24. The main thrust of the argument of the Learned Counsel for the respondent/Complainant is that only on 12.10.2011, the petitioner/Accused filed Criminal Miscellaneous Petitions after taking fifteen adjournments and that too when the matters have been posted for adducing evidence on the side of the petitioner/Accused on 19.5.2011 (after the closure of complainant''s side evidence on 29.4.2011). Also, that the Learned Counsel, for the respondent/Complainant brings it to the notice of this Court that once the evidence on the side of the Complainant was closed on 8.12.2010 and subsequently P.W. 1 has been recalled and cross-examination has been completed on 29.4.2011, on which date, the evidence on the side of the Complainant has been closed.

25. The Learned Counsel for the respondent/Complainant relies on the decision of this Court in N. Ayyasamy Vs. S.K. Chinnasamy, wherein it is observed that

Petitioners/accused has admitted his handing over blank cheque and one such cheque was allegedly retained by complainant, which has been utilised to file Complaint. Averments in reply notice does not indicate that signature of accused in cheque has been forged by complainant. No suggestion was made to P.W. 1 in course of trial and even failed to raise plea of forgery when petitioner was questioned u/s 313 of Cr.P.C.

and held that the petitioner has filed the present petition only to drag on the proceeding and consequently, the Revision Petition has been dismissed.

26. He also relies on the decision of this Court in Naseema Vs. Shareefa, at special page 384, it is held that:

As the petitioner has admitted the signature available in the cheque, he has estopped from raising a plea to compare the signature available in the cheque with his admitted signature, since there is no necessity for obtaining an expert opinion and further, it is observed that the petitioner filed the petition belatedly and it would also establish that it is only a delay tactics to protract the proceedings.

27. The Learned Counsel for the respondent/Complainant cites the decision of this Court in V. Srinivasan Vs. E.S. Gunasekar wherein at special page 66, it is held as follows:

The case is pending from 2006 onwards. The petitioner/accused soon after the receipt of statutory notice would have replied about these points now raised at the defence stage, and it is surprising to see that neither while the initial questioning nor when he was questioning u/s 313, Cr.P.C., such defence was taken. P.W. 1 was not even cross-examined on this point. In the impugned order, it has been stated that the case was repeatedly adjourned on the ground of settling the dues. The signature in the cheque has not been disputed. Therefore, the presumption is that such signature has been assigned only after knowing the contents. Merely because there is a different handwriting in the cheque, mechanically, without application of mind, at a belated stage, such a defence cannot be taken. The precedents relied on by the petitioner are not applicable to the case on hand, since it is apparent that such a defence and prayer has been made at a belated stage, only to drag on the proceedings.

28. The Learned Counsel for the respondent/Complainant cites the decision of this Court in A. Jesudhasan v. Gopi, 2008 (4) CTC 419, wherein at special page 420 has among other things observed as follows:

...A perusal of the deposition of P.W. 1 also discloses that only suggestion put by the petitioner is to the effect that the cheque was stolen and the same was misused for filing this case for the offence u/s 138 of the Negotiable Instruments Act and there is not even a suggestion put to P.W. 1, the complainant, in this case to the effect that the petitioner/accused is disputing the signature in the cheque. It is also pertinent to be noted that the accused himself examined as D.W. 2 and even in his deposition, he has not raised the defence to the effect that of disputing the signature found in the cheque. The accused cannot take different stand at different stages in respect of his defence. Therefore, this Court is of the considered view that the learned Magistrate has rightly dismissed the Petition filed by the petitioner herein for seeking the relief of sending the disputed cheque for handwriting expert opinion. The learned Magistrate has assigned valid reasons for rejecting the prayer and this Court is unable to find any infirmity or illegality warranting the interference of this Court and as such this Court is constrained to dismiss the Revision filed by the petitioner herein and accordingly, this Revision is dismissed. Consequently, connected Miscellaneous Petition is closed.

29. On the side of the Respondent/Complainant, a reliance is placed on the decision in Rajendran v. Usharanai, 2001 (1) LW (Crl) 319, wherein it is held as under:

At the outset, the petition u/s 482 Cr.P.C., is not maintainable against the order passed in revision by the Sessions Court as it amounts to second revision. Consequently, this petition is liable to be dismissed as not maintainable. Even

assuming that the cheque was filled up by some other person, once execution is admitted, it shall be taken that the cheque was issued by the accused in favour of the complainant towards the discharge of the liability. No law provides that in case of any negotiable instrument, entire body has to be written by maker or drawer only. What is material is signature of drawer or maker and not the body writing. Hence, question of body writing has no significance.

The conduct of the petitioner in abusing the process of Court is to be highly condemned. Therefore, while dismissing the petition, I am of the view that suitable costs to be imposed on the petitioner. As such the petitioner is directed to pay Rs. 2,500/- costs.

30. At this stage, a perusal of the affidavit in Cr. M.P. No. 45(A) of 2012 in C.C. No. 1 of 2010 on the file of trial Court, in paragraph 3, the petitioner/Accused has averred that the very specific case of the Complainant in his evidence is that the impugned cheques have been filled up and signed by him by a single pen by the same in fact in his presence. Five cheque cases have been filed on the file of the trial Court in C.C. Nos. 240 of 2010, 241 of 2010 and 242 of 2010 by one Kezhson as Complainant and C.C. Nos. 209 of 2010 and 197 of 2010 by one Boothalingam Pilial as Complainant and that he is the Accused. Moreover, the petitioner/Accused has categorically mentioned in the affidavit that he has given the supra cheque leaves with the said Kezhson as only signed unfilled leaves as security for the part of the College construction made in the year 2009. Later, it has been filled up by the Complainant as he is liable to pay Rs. 25,78,000/- in collusion with Boothalingam Pillai.

31. Likewise, in the affidavit in Cr. M.P. No. 46(A) of 2012 in C.C. No. 2 of 2012, it is stated that the cheque leaf has been filled up by the respondent/Complainant as if the petitioner/Accused is liable to pay 20 lakhs in collusion with Boothalingam Pillai. Similarly, in Cr. M.P. No. 47 of 2012 in C.C. No. 3 of 2012, it is stated that the cheque leaf has been filed up by the respondent/Complainant, as if the petitioner/Accused is liable to pay Rs. 20 lakhs in collusion with Boothalingam Pillai.

32. In short, the specific plea of the petitioner/Accused is that he is not liable to pay a single paise to the respondent/Complainant and therefore, to prove that Hand-Writing in the cheque was not made by him and in the cheque except signature, rest were filled up by the Complainant or his men which has to be forwarded to the Forensic Science Expert for Scientific Examination, in order to ascertain the age of the ink in signature, other contents in the cheque and number of pains used for filling it.

33. It transpires from the contents of counter averments filed by the respondent/Complainant that three cheque cases have been filed by him against the petitioner/Accused and the cheques have been given as security have been denied and also that the cheques have been filled up by the Complainant is not correct. Furthermore, it is mentioned that the petitioner/Accused is liable to pay a

sum of Rs. 25,78,000/- to the respondent/Complainant towards the construction of the building.

34. Added further, the respondent/Complainant in the counter to Cr. M.P. 45(A) of 2012 has also stated that Section 20 of the Negotiable Instruments Act is not a bar to cover a case of blank cheque. There is no specific bar in the Act for a cheque to be filled up by any person other than the Drawer. The Payee or Holder in Due Course has authority to fill up the blank cheque and that instrument is valid in law. Even if there is use of old ink in purpose, it would result in only further confusion and create a dent in the opinion of expert. As such, there is no necessity to send the disputed cheque admittedly signed by the Drawer for obtaining an expert opinion.

35. It appears that between the parties, civil proceedings are pending before the competent Court in regard to the money claims.

36. In this connection, this Court aptly points out the decision AIR 1993 Kant 334, wherein it is held as follows:

Wherein the cheque indorsed in favour of the possessor merely because some part was written by somebody other than the signatory, it could not be said that the party in whose favour it was indorsed should have been put on guard against accepting it when he had no reason to suspect the genuineness of the signature. There is a presumption u/s 118 that every such instrument was made or drawn for consideration and that a holder of negotiable instrument is a holder in due course, subject to the proviso stated in Clause (g), Section 118.

36. Also, this Court worthwhile recalls the decision in V.K. Gemini Vs. Chandran and Another, wherein at page Nos. 1285 and 1286, it is held as follows:

The legislature has safeguarded a honest drawer while drafting Section 139 by including the expression ''holder''. The interest of the complainant is also equally protected, by laying down a provision relating to presumption u/s 139 on an important factor coming u/s 138. The expression ''holder'' is cautiously used in Section 139 so that the presumption under the said section shall be drawn in favour of the complainant, only if it is established by evidence and other materials on record that he is the ''holder'' of the cheque, as defined u/s 8 of the Negotiable Instruments Act. In the absence of establishing the same, no presumption shall be drawn u/s 139, in favour of the complainant, who may ordinarily be the ''payee'' or ''holder in due course'', as the case may be. If this is not insisted, there may be chances for misuse of the provisions which will defeat the very object of the enactment.

Irrespective of whether the alleged transaction is stated in the complaint or not, if the complainant seeks to draw the presumption u/s 139 he is bound to establish the basis for drawing the presumption. The fundamental basis for drawing such presumption is that the Court''s satisfaction that the person in whose favour the

presumption is drawn is the ''holder'' of the cheque. If such fact is not established, the Court shall not draw such presumption in favour of the complainant. The complainant will not then be relieved of the burden of proving one the ingredients of the offence u/s 138. But, the complainant did not establish in this case that as the holder of the cheque, he is entitled, in his own name to receive and re-entitled, in his own name to receive and recover the amount due thereon from the accused etc. Hence presumption u/s 139 cannot be drawn in his favour to hold that the cheque, that it is admittedly drawn by the accused. The admission of the hand writing and signature on the cheque alone will not prove the offence u/s 138 of the Act, without proving the other ingredients. One of such ingredients is the specific purpose for which the cheque is drawn viz., ''for the discharge of a debt or other liability''. This is not proved in this case. Hence, there is no ground to interfere with the other of acquittal of the accused.

37. In commercial practice, a cheque is looked upon as a payment if a creditor accepts the same instead of monetary sum. As per Section 20 of the Negotiable Instruments Act, a person is authorised to complete the inchoate instrument deliver to him by filling up the blanks. Undoubtedly, the said statutory right is coupled with interest. The death of an Individual/Executant giving authority cannot affect the right in any manner, as opined by this Court. Generally, a pronote is executed in the name of Payer and left unfilled to be filled by the actual Holder, the intention being to enable the owner to pass it off to another person without incurring responsibility as an Endorser. In-law, the person in possession of incomplete instrument in material particulars has a valid authority to fill it up, in the considered opinion of this Court. Even an inchoate stamped instrument cannot be rejected on the basis that as per Section 93 of the Indian Evidence Act fill up of a blank is impermissible.

38. It is to be pointed out that a blank cheque could be filled up by the Holder thereof, which will be a valid instrument in the eye of Law. If a blank cheque is issued by a Drawer, after signing, Section 20 of the Negotiable Instruments Act, will have no application, as opined by this Court. A cheque under proviso (a) of Section 138 of the Negotiable Instruments Act is to be presented to the Bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier. Furthermore, in order to make person other than the Payee, a Holder in Due Course of cheque payable to order there shall be an endorsement in his favour and delivery of cheque. It is not open to an accused in a presumption u/s 138 of the Negotiable Instruments Act to lead evidence that he had reasonable cause for issuing the cheque of the nature mentioned in Section 138 of the Negotiable Instruments Act. Such a defence is excluded by Section 140 of the Act.

39. The question whether the Holder of a cheque can present the cheque nearly after five years by relying on Section 20 of the Negotiable Instruments Act in and by which, it is a barred one can very well be raised before the trial Court and appreciated by it, based on oral and documentary evidence to be let in by the

respective parties.

40. It cannot be brushed aside that the term ''may presume'' u/s 4 of the Indian Evidence Act enjoins that whenever it is provided by the said Act, a Court of Law may presume a fact.

41. It cannot be gain said that as per Section 118 of the Negotiable Instruments Act, there is a presumption in law that the document is supported by consideration. The burden lies on the Defendant or the Respondent/Accused to establish that what is apparent on the document is not a true one.

42. If the execution of pronote is admitted, the presumption u/s 118(A) of the Negotiable Instruments Act arises. Of course, the said presumption is a rebuttable one either by circumstantial evidence or presumption of fact drawn as per Section 114 of the Indian Evidence Act. No wonder, Section 139 of the Negotiable Instruments Act, provides for early presumption in favour of the Complainant unless the contrary is proved.

43. The presumption u/s 138 of the Negotiable Instruments Act is a rebuttable one. The onus of proving that the cheque has not been issued for a debt or liability is on the accused. The Drawer has to prove in the trial by letting in cogent evidence in this regard.

44. Indeed, Sections 138 and 139 of the Negotiable Instruments Act are quite in tune with the definition contained in section 4 of the Indian Evidence Act which speaks of presumption of fact. The cause of action as visualised in Section 142 of the Negotiable Instruments Act, 1881 arises at the place where the Drawer of the cheque fails to make payment of the money. It can be the place where the Bank to which the cheque has been issued is situated. Moreover, it may also be the place where the cheque has been issued or delivered. The Court within whose jurisdiction any of the afore mentioned places falls, has therefore got jurisdiction to try the offence u/s 139 of the Negotiable Instruments Act.

45. As a matter of fact, if on the basis of averments, a Court of Law has jurisdiction it has to proceed with the complaint. Further, the place where the Creditor resides or the place where the Debtor resides cannot be said to be the place of payment unless there is any indication to that effect either expressly or impliedly.

46. Besides this, it is to be remembered that Section 20 of the Negotiable Instruments Act, 1881 would not be attracted automatically. All these things are matter of evidence to be gone into by the trial Court when parties adduce evidence in this regard, before holding as to the application of Section 20 read with. Section 118 of the Negotiable Instruments Act. To put it succinctly, the concept of burden of proof ought to be applied correctly.

47. No doubt, the opinion of a Hand Writing Expert is a relevant fact and the same is admissible in evidence. Equally, there is no two opinion of the fact that a Judge is not

supposed to possess the expert knowledge in such matters. Really speaking, the opinion tendered by an expert as per Section 45 of the Indian Evidence Act is to be treated as a relevant one. Of course, it is the primordial duty of a Court of Law to see whether there is any reasonable and genuine case made out by a litigant signature, the aid of Law for obtaining an opinion of an expert in order to send the cheque for ascertaining the age of the ink in signature and other contents in the cheque etc.

48. A reading of Section 243 of Cr.P.C., makes it crystal clear that a valuable right is given to the accused to examine defence witnesses. If the Petitioner/Accused decides to examine an expert and to obtain his opinion in the matter in issue. It is his option to examine the said expert in accordance with law. The A valuable right specified u/s 243 of Cr.P.C., is not within the ambit of investigation 21 and would admit of no restriction except 4 where the Learned Judicial Magistrate is satisfied for the reasons to be recorded in writing o that the desired exercise is purely a vexatious c or frivolous one or with a view to delay the pending proceedings or to defeat the ends of s justice.

49. Moreover, if the expert submits his report and tenders his evidence, the same will have to be considered by the trial Court along with other available oral and documentary evidence on record at the time of disposal of the main case. Even in the absence of specific provision in Chapter XIX of Cr.P.C., the Petitioner/Accused can request the Court that the document whose genuineness he disputes may be sent to an Expert for obtaining his opinion. This is inbuilt as per Section 243 (2) of Cr.P.C., in the considered opinion of this Court.

50. The Learned Counsel for the petitioner/Accused submits that the Petitioner/Accused evidence has not commenced and therefore, it cannot be said by any imagination that Cr. M.P. No. 45(A) of 2012 in C.C. No. 1 of 2012, Cr.M.P. No. 46(A) of 2012 in C.C. No. 2 of 2012 and Cr. M.P. No. 47 of 2012 in C.C. No. 3 of 2012 have been filed belatedly on 12/10/2011.

51. So far as the present cases are concerned, the petitioner/Accused in para 3 of his averments in Cr. M.P. No. 45(A) of 2002 has clearly admitted that he had given five cheque leaves with Kezhson as only signed unfilled leaves as security for the part of the College construction made in the year 2009 and later, it has been filled up by the respondent/Complainant. Admittedly, the evidence on the side of the respondent/Complainant has been closed as early as on 24.3.2011 and the matter has been posted to 19.5.2011 for adducing evidence on the side of the petitioner/Accused. After fifteen adjournments, the petitioner/Accused has projected Crl. M.P. No. 45(A) of 2012 in C.C. No. 1 of 2012, Crl. M.P. No. 46(A) of 2012 in C.C. No. 2 of 2012 and Crl. M.P. No. 47 of 2012 in C.C. No. 3 of 2012 only on 12.10.2011. Although the petitioner/Accused has not replied to the statutory notice Exhibit P-5 dated 17.4.2010 issued by the respondent/Complainant and the same being not a fatal one yet he has admitted his signature available in the cheques in issue.

52. At this stage, this Court pertinently points out that the admission of the signature of the cheques alone will not establish the offence u/s 138 of the Negotiable Instruments Act without proving the other ingredients. One such ingredient is that the cheque is drawn/has been drawn for the ''Discharge of a Debt or other Liability". Added further, whether the ingredients of Section 20 of the Negotiable Instruments Act are attracted as a matter of routine or automatically are to be looked into by the trial Court at the time of evidence being adduced by the parties in the main case (including the Petitioner/Accused as the case may be) before coming to the conclusion as to the application of Section 20 read with. Section 118 of the Negotiable Instruments Act. At the risk of repetition, it is not out of place for this Court to significantly mention that ''the concept of onus of proof ought to be applied properly in the manner known to law and in accordance with law''.

53. Be that as it may, in view of the fact that in Law, a person in possession of incomplete instrument in material particulars do have the authority to fill it up and even if a cheque is partly written but signed by the Account Holder and the rest filled by another is valid under the Negotiable Instruments Act, this Court without expressing any opinion on the merits and demerits of the pending matters before the trial Court opines that the revision petitioner (in all the three revisions) has projected Crl. M.P. No. 45(A) of 2012 in C.C. No. 1 of 2012, Crl. M.P. No. 46(A) of 2012 in C.C. No. 2 of 2012 and Crl. M.P. No. 47 of 2012 in C.C. No. 3 of 2012 (under Section 45 of the Indian Evidence Act) belatedly, after taking nearly fifteen adjournments as stated supra and filed the said Miscellaneous Petitions only on 12.10.2011 which in the considered opinion of this Court are meant only to procastinate the pending proceedings. Viewed in that perspective, the said Crl. M.Ps are devoid of any merits.

54. Suffice it for this Court to point out that a reading of the orders passed in Crl. M.P. No. 45(A) of 2012 in C.C. No. 1 of 2012, Crl. M.P. No. 46(A) of 2012 in C.C. No. 2 of 2012 and Crl. M.P. No. 47 of 2012 in C.C. No. 3 of 2012 dated 22.08.2012 show that the trial Court has not committed any impropriety or illegality in dismissing the said miscellaneous petitions. Consequently, the/Criminal Revision Petitions fail. In the result, the Criminal Revision Petitions are dismissed. No costs. It is made clear that the dismissal of the Criminal Revision Petitions will not preclude the petitioner/Accused and the respondent/Complainant to raise all the factual and legal pleas before the trial Court in C.C. Nos. 1, 2 and 3 of 2012 pending on the file of the trial Court. In this regard, the Trial Court is directed to provide adequate opportunities to them. Consequently, the connected Miscellaneous Petitions are also dismissed.