

**(2010) 09 MAD CK 0271**

**Madras High Court (Madurai Bench)**

**Case No:** Criminal R.C. (MD) No. 845 of 2008 and M.P. (MD) No"s. 1 to 1 of 2008

P.C. Pillai and Co., C.  
Ramalakshmi and B. Lalitha

APPELLANT

Vs

S.R. Bagavath Singh Raja

RESPONDENT

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**Date of Decision:** Sept. 6, 2010

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 243, 243(2), 313
- Negotiable Instruments Act, 1881 (NI) - Section 138

**Hon'ble Judges:** Aruna Jagadesan, J

**Bench:** Single Bench

**Advocate:** R. Anandharaj, for M. Karthikeya Venkitachalapathy, for the Appellant; V. Kathirvelu, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

@JUDGMENTTAG-ORDER

Aruna Jagadesan, J.

The revision petitions have been filed challenging the orders passed in Cr.M.P. Nos. 5293, 9432 and 9491 of 2008 in STC Nos. 2558, 2111 and 1440 of 2008 respectively dated 20.08.2008.

2. The complaints have been preferred by the Respondents/complainants herein against the Petitioners for the offence u/s 138 Negotiable Instruments Act, 1881 (for short the "Act") before the learned Judicial Magistrate, Tenkasi, alleging that the third Petitioner issued cheques for discharging their liability. On presentation of the said cheques they were returned as account closed. Notices were issued by the complainants and in the reply sent by the Petitioners, they have disputed the signatures in the impugned cheques and also stated that the account has been closed even before the issuance of the alleged cheques. Thereafter, observing all the formalities as contemplated under the Act, the Respondents/complainants had

preferred the above cases viz., S.T.C. Nos. 2558, 2111 and 1440 of 2008 against the Petitioners on the file of the learned Judicial Magistrate, Tenkasi. The Petitioners had appeared before the Magistrate and had filed an application u/s 243(2) Code of Criminal Procedure raising inter-alia objection that the accused neither signed in the cheques nor issued to the complainants and therefore seeking a relief of sending the disputed cheque for expert opinion to compare the disputed signature with that of the admitted signature and writing.

3. The learned Judicial Magistrate dismissed those applications on the ground that the genuineness of the signatures could be questioned only at the time when the Petitioners enter into defence and it is premature to send those documents for expert opinion as the evidence of the complainant is yet to be adduced. Being aggrieved by the said order of the learned Judicial magistrate declining their prayer for referring the document to handwriting expert for examination at that stage, the Petitioners have preferred the present revision petitions.

4. Mr. R. Anandharaj for Mr. M. Karthikeya venkatachalapathy, learned Counsel for the Petitioners contended that the learned Judicial Magistrate is not justified in dismissing the applications as the accused has got a right to adduce evidence in support of the defence as they have disputed the very signatures and other particulars contained in the disputed cheques. The learned Counsel for the Petitioners would submit that it is a valuable right given to the accused u/s 243(2) of the Code of Criminal Procedure, to adduce evidence in support of the defence and declining such request would only be a denial of fair trial.

5. The learned Counsel would reiterate the contention made before the learned Judicial Magistrate and relied upon the decisions referred to before the learned Judicial Magistrate reported in 2007 (2) MWN 20 in P. Arumugam v. Rajamani and the decision of the Honourable Supreme Court reported in [Mrs. Kalyani Baskar Vs. Mrs. M.S. Sampornam](#), . The learned Counsel would contend that they cannot be debarred from producing the evidence to dispute the signature on the cheques and therefore, challenged the dismissal of the applications by the learned Judicial Magistrate.

6. On the other hand, Mr. V. Kathirvelu, the learned Counsel appearing on behalf of the Respondents submitted that there is no scope for the Petitioners/accused to make such prayer before the learned Judicial Magistrate when the prosecution evidence was not adduced and according to him, even before adducing evidence on the side of the complainant, the Petitioners/accused cannot be allowed to make such a prayer to send the cheques in question for being examined by the handwriting expert, when the cheques itself have not been produced before the Court and marked as a documents through the complainant.

7. In the present case, admittedly even before the cheque had been admitted into evidence, the Petitioners have filed these petitions before the learned Judicial

magistrate for an order referring cheques to a handwriting expert for examination and report on the ground that the signature was forged and was not in his/her own handwriting or signature. The learned Judicial Magistrate has rejected the prayer on the ground that it is premature as the disputed documents itself is not brought into the evidence.

8. The Trial of a criminal case has to be conducted according to the procedural norms that have been provided by the Code of Criminal Procedure and the Evidence Act in that regard and the trial Court has to observe those procedures strictly while holding the trial of a criminal case.

9. According to those provisions in the Code of Criminal Procedure, the complainant has to let in evidence and only after such evidence is taken in full, the witnesses having been cross examined by the defence, the learned Judicial Magistrate will take the next step namely examination of the accused persons u/s 313 of the Code of Criminal Procedure. After such examination of the accused persons by the Court is over, the Court will then call upon the accused persons to enter their defence and adduced evidence u/s 243 of the Code of Code of Criminal Procedure. Thus the Code has made particular provisions enabling the defence to offer its evidence in a positive manner, if it so likes apart from the fact that it will be in a position to challenge any evidence adduced by the prosecution, either oral or documentary while cross examining any particular witness and also while being examined u/s 313 Code of Criminal Procedure, the accused will have his say regarding any such evidence adduced by the prosecution. The defence will be at liberty to examine any witness or produce any document in support of its case before the Trial Court at that stage in accordance with that section.

10. It would appear that the present petitions filed by the Petitioners/accused before the Trial Court for all practical purposes is aimed at seeking the Court's leave to adduce certain evidence in support of its case. If the defence wants to exercise such right, then it may certainly make such prayer, but only at the appropriate stage and in consonance with the provision of the Code. When the prosecution evidence itself is not adduced and the cheques in question has not been marked before the Trial Court, certainly the defence cannot make any prayer for being given any opportunity to adduce its evidence. It is no doubt true that when the Petitioners are prosecuted for the offence u/s 138 of the Negotiable Instruments Act and when the accused have denied his/her signature on the cheque, the accused would be entitled to invite expert opinion on the said disputed signatures. But that can be done, only at the stage of adducing defence evidence. When the stage for adducing evidence comes, if any such petition is filed, the Court will have the duty to deal with dispose of such petition in accordance with law, bearing in mind the decision of the Apex Court. In view of the reasons stated above, the petitions in question have been rightly rejected by the learned Magistrate at this stage and I find no reason to interfere with the said orders. However, it is open to the Petitioners to file a petition

at the appropriate stage i.e. before entering into defence u/s 243(2) of the Code of Criminal Procedure.

11. With the above said observations, the criminal revision petitions are dismissed. Consequently, connected miscellaneous petitions are closed.