

Case No. 35

2004 (5) CTC 84

BEFORE MADURAI BENCH OF MADRAS HIGH COURT

M.Thanikachalam, J.

Crl.R.C.No.11 of 2004 and Crl.M.P.No.19 of 2004 27.9.2204

P.S.A. Thamotharan

Petitioner

Vs

Dalmia Cements (B) Ltd., Dalmiapuram, Trichy,
bring it down rep. by its Deputy Manager (Accounts),
J. Venkatesh

Respondent

Section 138 of the N.I. Act - Act does not require that drawer should fill up all the blanks in the cheque - If signature admitted, no need for examination of the cheque by handwriting expert regarding filling up of the other blanks in cheque.

Mr. H.Rajasekaran, Advocate for Petitioner.

Mr. V.Karthikeyan, Advocate for Mr.R.Sankaranarayanan, for Respondent.

PETITION DISMISSED

ORDER

1. By consent of both sides, the revision itself is taken for hearing

2. The petitioner is facing trial in C.C.No. 151/2000 before the Trial Court for the alleged offence said to have been committed by him u/S 138, Negotiable Instruments Act, (in short, N.I. Act). It seems the accused/petitioner had issued a cheque for Rs.3,95,000. When the cheque was tendered by the respondent for collection through his Bank where he is having account, the cheque bounced on the ground 'insufficient funds'. Thereafter notice has been issued which was acknowledged but not replied. Though time is given, within the time stipulated, amount also has not been paid. In the above said circumstances the holder of the cheque namely the respondent herein preferred a complaint before the concerned Magistrate complaining of the offence u/s. 138, N.I. Act. After appearance of parties the Trial Court also complaint the prosecution side examination of witnesses, thereafter questioning the accused u/S. 313, Cr.P.C. As represented by the learned counsel for the petitioner

two witnesses have also been examined on the defence side. At this stage, the accused had filed petition before the Trial Court seeking the permission of the Court to examine Ex.P-2 and Ex.R-4 by handwriting expert, in order to ascertain the genuineness of the documents. The learned Judicial Magistrate after considering the facts and circumstances of the case supported by legal position held that the petition is not maintainable since there is no need to compare the above exhibits by a hand writing expert and in this view dismissed the petition in view of the admitted fact that the petitioner had not disputed his signature in Ex.P-2/cheque which order is under challenge in this revision.

3. The learned counsel for the petitioner submits that the Trial Court ought to have given sufficient opportunity for the petitioner to make out a case proving that the body of the cheque was nor written by him, which could be done only by the examination of the disputed document with some admitted document, having the hand writing of the accused.

4. On the other hand the learned counsel for respondent submits that the evidence on record are sufficient to decide the case one way or the other and the opinion of the hand writing expert is not necessary to decide the case in view of the fact that accused had admitted his signature in the cheque.

5. As rightly submitted by the learned counsel for the respondent which is not disputed by the learned counsel for the petitioner, Ex.P-2/cheque does contain the signature of the petitioner thereby admitting that the cheque leaf belongs to the petitioner and he had subscribed his signature in the cheque. The only contention appears to be that the body of the cheque was not written by the petitioner/accused. To have validity for the Negotiable Instruments such as it is not mandatory and no law prescribes that the body of the cheque should also be written by the signatory to the cheque. A cheque could be filled up by anybody and if it is signed by the account holder of the cheque accepting the amount mentioned therein. In this case the signature of the cheque Ex.P-2 is admitted by the petitioner. Therefore, by comparing the handwritings namely the body of the cheque as well as admitted hand writing of the petitioner it is not going to tilt the balance of the case in anybody's favour. It all depend upon the liability and under what circumstance the cheque was issued. In this case the complaint does contain all the requirements warranting a proceedings under Section 138, N.I. Act. By the examination of the witnesses, if the petitioner/accused feels that the cheque does not contain his handwriting, he can prove the same whether it will affect the case of the respondent/complainant or not. There-

fore considering the admitted position as well as the conduct of the parties and the stage of the Trial. I do not find any reason to interfere with the finding of the Trial Court made in CrI.M.P.No. 685 of 2004 since the Magistrate has considered all the points relevant to decide the petition coupled with law. The learned counsel for the petitioner also failed to persuade me, by pointing out how the Trial Court has committed error and how by comparing the handwriting in the cheque with the admitted and writing of the petitioner; the case would be changed of improved, etc. In this view of the matter, I find no reason to interfere with the finding of the Magistrate and the petition is devoid of merits and the same is dismissed. Consequently, CrI.M.P.No.19 of 2004 is also dismissed.