

IN THE COURT OF JUDICIAL MAGISTRATE NO.1, CHENGALPATTU**PRESENT: Tmt. V.Lavanya, M.L.,****Judicial Magistrate No.I, Chengalpattu****C.M.P. No. 723/2024 in C.C.No.260-2022****Dated the 26th day of June 2024**

Mr.Clarance Selvaraj, S/o. Edwin,
Residing at No.29,
Phase 2 Vasantham Nagar,
Thimmavaram, Athur,
Chengalpattu Taluk,
Chengalpattu District.

..... Petitioner/Accused

/Vs/

Mrs.Tamilarasi w/o.Sivasubramani,
Residing at No.6/A12, Azhagesan Nagar,
Chengalpattu Taluk and District.

... Respondent/Complainant

The petition has come before me for final hearing on in the presence of M/s. K.Sarangi Muthu and Jansi Rani Counsels for the petitioner/Accused and M/s. C.R.Vinayagam and S.Magesh counsels for the respondent/Complainant and upon hearing the arguments of both sides and on perusal of records this court delivered the following.

ORDER

(1) This accused has filed this petition under section 45 Indian Evidence Act praying to the send disputed cheque in this case for comparison by handwriting expert opinion .

(2) It is contended by the accused in the petition that, he never issued cheque to the complainant and that he had never seen the complainant in his life time. That there is no financial transaction between the accused and the complainant. That the accused being the government servant has no necessity to take credit from the complainant. That the accused is disputing his signature in the cheque. The accused prays to send the cheque No. 165472 for comparison in respect of the signature.

2) The complainant filed counter stating that the facts pleaded in the petition are false. That the accused is the family friend of complainant for long time. That the accused issued the cheque. That the accused failed to send reply notice by stating all the reply. That the accused pending trial admitted issuance of cheque and approached for compromise. That this petition is filed to mislead the case. That this petition is filed to prolong the case. The learned counsel for the complainant relied on a citation P.A.Krishnappa Vs A.Raghu reported in 2014 (3) MWN (Cr.) DCC 25 (Mad) and contended that this petition is not maintainable.

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3) Heard both. Records perused.

5. The section 45 Indian Evidence Act provides as follows,

"When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity of handwriting (or finger impressions) the opinions upon that point of persons specially skilled in such foreign law, science or art, (or in questions as to identity of handwriting) (or finger impressions are relevant facts.

Such persons are called experts".

6) So when the court has to form opinion regarding the handwriting, the opinion of the experts become relevant facts. The accused in this case is denying the signature in the case related cheque. To draw the presumption U/s 139 of Negotiable Instruments Act the signature in the cheque and the execution of the Negotiable Instrument must be proved. The accused has the burden of proving the fact that he has not executed the cheque. The accused contend that he has not signed the cheque. The accused should be given a fair opportunity to put forth his defence. The citation relied by the counsel is on different footing regarding powers of High court to entertain second revision petition and this court finds that the same is not applicable to the facts of this case. In order to give the accused an opportunity to put forth his defence this court considers that it is necessary to send the cheque for comparison to the forensic department to find out the true fact. The accused is directed to produce any admitted document of the year 2022 which contains his signature for comparison. The accused is directed not to prolong the trial and to cooperate for speedy disposal of case.

In the result, this petition is allowed with above directions.

Dictated to the steno typist directly typed by her and corrected by me and pronounced by me in the open court this the 26th day of June 2024.

Judicial Magistrate No.I.,
Chengalpattu.

