

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. _____ OF 2024
[Arising out of SLP (Crl.) No.3377 of 2019]

K. RAMESH

Appellant(s)

VERSUS

K. KOTHANDARAMAN

Respondent(s)

ORDER

Leave granted.

2. Notice in the appeal was issued on 15.04.2019. Dasti service, in addition, was permitted. The learned Registrar has noted by his order dated 24.07.2019 that service of notice qua the sole respondent is complete but no one has entered appearance on his behalf. Even as per the latest Office Report dated 03.01.2024, it is noted that the respondent was served on 07.05.2019, but there is no representation on behalf of the respondent. In the circumstances, we have heard learned counsel for the appellant.

3. The appellant is aggrieved by the order dated 23.11.2018 passed by the Madras High Court in Crl. R.C. No.1212 of 2018 by which the

Criminal Revision Petition filed under Section 397 read with Section 401 of the Criminal Procedure Code, 1973 against the order dated 27.08.2018 in Criminal Miscellaneous Petition No.1456 of 2018 filed in C.C. No.2767/2018 pending trial before the 20th Metropolitan Magistrate, Egmore at Allikulam has been set aside.

4. Learned counsel for the appellant drew our attention to the latest judgment of this Court in the case of ***Bir Singh vs. Mukesh Kumar, (2019) 4 SCC 197 ('Bir Singh')*** and contended that having regard to Section 118 read with Section 139 of the Negotiable Instruments Act, 1881, when once the negotiable instrument has been marked in evidence, presumption regarding its validity would arise and it is for the accused to displace the said presumption. That in the instant case, the respondent had sought to seek a forensic opinion to compare the contents of the cheque with the signature of the petitioner and the same was wholly unnecessary having regard to the judgment of this Court.

5. In this regard our attention was drawn to paragraphs 32, 33, 34 and 36 of the judgment in ***Bir Singh***, wherein it has been observed that even if a blank cheque leaf is voluntarily signed and handed over by the accused towards some payment would attract the presumption

under Section 139 of the Act and in the absence of any cogent evidence to show that the cheque was not issued in discharge of the debt, the presumption would hold good. The said paragraphs are extracted below:

“32. The proposition of law which emerges from the judgments referred to above is that the onus to rebut the presumption under Section 139 that the cheque has been issued in discharge of a debt or liability is on the accused and the fact that the cheque might be post-dated does not absolve the drawer of a cheque of the penal consequences of Section 138 of the Negotiable Instruments Act.

33. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.

34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.

36. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.”

6. It is not in dispute that in the instant case, the accused has signed the cheque. The only dispute is with regard to the age of the ink used in making the signature on the cheque and the age of the signature and contents of the cheque.

7. We find that the application filed by the accused before the trial Court was wholly frivolous and that the trial Court had rightly rejected the said application. But in our view, the High Court ought not to have allowed the said application and thereby allowed the revision petition of the respondent-accused.

8. In the circumstances, we place reliance on the aforesaid judgment of this Court and allow this appeal and thereby set aside the impugned order. Consequently, the learned Magistrate Court is directed to dispose of the case in accordance with law and as expeditiously as possible.

The appeal is allowed the aforesaid terms.

.....**J.**
[B.V. NAGARATHNA]

.....**J.**
[AUGUSTINE GEORGE MASIH]

New Delhi.
February 09, 2024

ITEM NO.69

COURT NO.12

SECTION II-C

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal (Crl.) No.3377/2019

(Arising out of impugned final judgment and order dated 23-11-2018 in CRLRC No. 1212/2018 passed by the High Court of Judicature at Madras)

K RAMESH

Petitioner(s)

VERSUS

K. KOTHANDARAMAN

Respondent(s)

Date : 09-02-2024 This petition was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

For Petitioner(s) Mr. V. Puneedhan, Adv.
Mr. Selvam P, Adv.
Mr. Sameer Aslam, Adv.
Mr. S. Gowthaman, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application(s), if any, shall also stand disposed of.

(KRITIKA TIWARI)
SENIOR PERSONAL ASSISTANT

(MALEKAR NAGARAJ)
COURT MASTER (NSH)

(Signed order is placed on file)