

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2015

Coram

THE HONOURABLE MR.JUSTICE B. RAJENDRAN

Criminal Revision Case No. 455 of 2014
and
M.P.No.1 of 2014

S.I.Anwar Hussain

..Petitioner/Accused

Versus

P.Jeyakumar

..Respondent/Complainant

Criminal Revision Case filed under Section 397 read with 401 of Cr.P.C. against the Judgment dated 04.02.2014 passed in C.M.P.No.5576 of 2013 in C.C.No.17 of 2013 on the file of the learned Fast Track Court-II (Magisterial Level), Coimbatore.

For Petitioner : Mr.V.V.Sairam

For Respondent : Mr.V.Elangovan

ORDER

This Criminal Revision has been filed by the petitioner/accused aggrieved by the order dated 04.02.2014 passed in C.M.P.No.5576 of 2013 in C.C.No.17 of 2013 on the file of the learned Fast Track Court-II (Magisterial Level), Coimbatore. By the said order dated 04.02.2014, the Court below dismissed the petition filed by the petitioner under Section 45 of the Indian Evidence Act to send the Katcha book (Ex.D1) to an expert for the purpose of comparison of the signature thereon.

2. The respondent herein has initiated proceedings under Section 138 of The Negotiable Instruments Act against the petitioner/accused. As per the complaint under Section 200 Cr.P.C. r/w Section 138 & Section 142 of Negotiable Instruments Act, the accused had borrowed a sum of Rs.4,50,000/- on 12.01.2012 and failed to repay the same. After repeated requests, the accused had issued a cheque on 14.08.2012 for Rs.4,50,000/- being the principal amount and no interest had been paid so far.

3. The proceedings were defended by the petitioner/accused stating that even though he had borrowed certain amount from the complainant, he repaid certain amount which was reduced into writing in the Katcha book maintained by the complainant himself. However, the complainant has conveniently failed to produce the said book before the trial Court. Therefore, during the pendency of the proceedings, the petitioner/accused has filed the instant petition under Section 45 of the Indian Evidence Act by contending that unless the contents in the Katcha book were sent to expert to find out the signature of the complainant, he will be highly prejudiced.

4. Learned counsel appearing for the revision petitioner submits that while taking the loan from the complainant, the amount had been mentioned in the 'Katcha' note book and the same has been marked as Ex.D1, Therefore, a petition was filed seeking to compare the hand writing of the complainant in the said book. The said document sought for comparison is very much essential as there is an endorsement in the same by the complainant regarding payment, however, without giving sufficient opportunity to the petitioner, the court below has summarily rejected the petition filed under Section 45 of Evidence Act. The court below had stated that the comparison can be made only with the admitted handwriting either two years prior or after two years and since the 'Katcha' note book does not contain any date, has rejected the said application which is erroneous. It is further submitted that the court below failed to taken into consideration the reply notice sent by the petitioner wherein the very same stand was taken by the petitioner/accused that there were certain endorsements made in Ex.D1. In this connection, the learned counsel for the petitioner relied on the decision of this Court in M.S.Saravanan vs. S.M.Jeyaraj reported in 2014 (1) MWN (Cr.) DCC 34 Mad.) wherein, this Court has stated that adequate opportunity has to be provided to the accused if there is a valuable, legal and admissible evidence which could be projected by him so as to enable him to strengthen his defence. According to the learned counsel for the petitioner, though the 'Katcha' note book was available and the same has been marked as Ex.D1, the court below has failed to note that the said note book had been maintained by the complainant himself and he has simply filled in the amounts. However, the learned counsel on instructions states that the petitioner is prepared to deposit a portion of the cheque amount to show his bonafide and is ready and willing to co-operate for completion of the proceedings within a shot span of time.

5. On the other hand, learned counsel appearing for the respondent would contend that the revision petitioner has not chosen to mark any other document for comparison and hence, the court below had rightly rejected the petition filed by the revision petitioner.

6. Heard the learned counsel on either side and perused the materials available on record.. On a careful perusal of the order it is seen that the court below had dismissed the application filed by the petitioner on the ground that the said 'Katcha' note book does not contain any date at all. From the perusal of the copy of the 'Katcha' note book, it is seen that in the first page the following columns duly filled in were made available;

கடன் எண்.....	
பெயர்	௭ 1 அன் வா
தொழில்	குரசவேரசந
விலாசம்	ஊாநேலயஅயிடயலயஅ
கடன் தொகை ரூ	° 2,53,540/-
.....	
ஆரம்ப தேதி	முடிவ, தேதி
16.03.12	26.06.13
.....	

7. From the reading of the above, it is seen that though the above document does not contain the date of its origin, the beginning date of the transaction and the closing date of the transaction had been clearly mentioned. Even from the further reading of the second page of the

'Katcha' note book, it is seen that a sum of Rs. 17,000/- had been paid at the first instance and at the second instance a sum of Rs.15,000/- had been paid. However, in the second page, in the date column, no date had been mentioned in the first instance and at the second instance only "14/04" had been mentioned and no year is mentioned. When this is available, the mere rejection especially when the revision petitioner has stated right from the beginning that in the reply notice the amount borrowed is different and the same plea had also been raised before the court below, I am of the view that an opportunity has to be given to the petitioner/accused, to prove his rebuttal evidence. No doubt the revision petitioner had not chosen to mark any document for comparison of the signature in Ex.D1 and he should have done so. As rightly contended by the Court below the revision petitioner could have marked some document with the admitted handwriting two years prior or after the crucial date, for comparison. However, taking into consideration the submissions of the learned counsel for the revision petitioner that the petitioner is prepared to deposit a sum of Rs.1,00,000/- (Rupees One Lakhs Only) and he is ready and willing to complete the trial proceedings, I am of the view that it would suffice to direct the revision petitioner to deposit a sum of Rs.1,00,000/- (Rupees One Lakh Only) within a period of four weeks, from the date of receipt of a copy of this order. The revision petitioner is also at liberty to produce the document for comparison which came into existence during the relevant point of time i.e., two years prior or after the crucial period and it should contain the admitted signature of the complainant, within a period of four weeks from the date of receipt of a copy of this order and such document to be produced by the petitioner/accused for comparison shall be to the satisfaction of the trial Court.

8. With the above observations, this Criminal Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

smi/rsh

Sd/-

Assistant Registrar (CS-VII)

/True Copy/

Sub-Assistant Registrar

To

1. The Judicial Magistrate,
Fast Track Court-II, Coimbatore.

2. The Public Prosecutor,
High Court, Madras.

+1 C.C. To MR.S.Doraisamy, Advocate in SR.NO.58189

+1 C.C. To MR.V.V.Sairam, Advocate in SR.NO.57948

Cr1.R.C.No.455 of 2014