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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Cr1.R.C.No.68 of 2015

Mohammed John

...Petitioner/Accused

Vs

Nowshath

...Respondent/Complainant

Criminal Revision filed under sections 397 r/w 401 of Criminal Procedure Code to call for the records and set aside the order passed by the Judicial Magistrate No.III, Salem, Salem District in CMP No.3932 of 2014 in STC No.395/2012 on the file of the Judicial Magistrate No.III, Salem dated 13.11.2014.

For Petitioner : Mr.B.Vasudevan

O R D E R

Criminal Revision Case is filed against the order in CMP No.3932 of 2014 in STC No.395/2012 on the file of the Judicial Magistrate No.III, Salem dated 13.11.2014.

2. On the basis of a complaint, a case in STC No.395 of 2012, has been taken on file by the learned Judicial Magistrate No.5, Salem, under Sections 138 and 142 of the Negotiable Instruments Act. At the time of questioning, the defence of the accused/petitioner was that he pledged TATA Indica vehicle bearing Regn.No.TN30 AA 4757 to the complainant, and received Rs.70,000/-. As security for the amount, he had issued a IDBI Cheque bearing No.076983 and also signed on a 20 Rupees Non-Judicial Stamp Paper. In addition to the above, he has permitted the complainant to use the vehicle. No interest was charged. Handed over the copy of the Registration Certificate and other forms.



3. On 12.08.2011, the petitioner paid Rs.50,000/-. After receiving the said amount, the vehicle was returned. Petitioner assured payment of balance Rs.20,000/- within three months. It is the further case of the accused/petitioner that Nowshath, the complainant promised to return the cheque bearing No.076983, on receipt of the abovesaid balance amount. Acknowledging the receipt of Rs.50,000/- and assuring to return the abovesaid cheque, complainant has given a receipt dated 12.08.2011.

4. Perusal of the impugned order shows that the respondent/complainant has denied the signature found in D1, receipt. Therefore, an application has been filed under Section 45 of the Indian Evidence Act, for a direction to ascertain the handwriting and also to note down the difference in the ink, between the signature and other letters, and further, to ascertain the signature in Ex.D1, Receipt.

5. During questioning under Section 313(1) Cr.P.C., the accused has not stated anything about the pledging of the vehicle, borrowing of money, issuance of any cheque, payment of Rs.50,000/- to the complainant and issuance of the existence of Ex.D1, Receipt. The Court below has also found that the document was not properly stamped and attested and hence, was not inclined to rely on the same. Existence of the document was also not pleaded earlier.

6. Thus, it could be seen that at the fag end of th trial, the accused has introduced a new case as if his vehicle viz., TATA Indica Car bearing Regn.No.TN30 AA 4757 was pledged to the complainant and that a sum of Rs.70,000/- was received as security, for the mortgaged amount, cheque bearing No.076983 for a value of Rs.50,000/- was given on 15.06.2011 and subsequently, the said amount of Rs.50,000/- was repaid on 12.08.2011 and that Ex.D1, Receipt was given by the complainant.

7. Though, Mr.B.Vasudevan, learned counsel for the petitioner assailed the correctness of the impugned order on the grounds that the lower Court erred in coming to an erroneous conclusion that the existence of the document was not pleaded earlier, and further contended that the Court below has failed to give a reasonable opportunity to the petitioner to establish his defence, this Court is not inclined to countenance the said submissions, for the reasons, that sufficient opportunity has been given to the petitioner/accused at various stages to plead and substantiate the existence of Ex.D1, Document/Receipt. As rightly observed, there was no reply to the statutory notice. In 313 (1) Cr.P.C. questioning. The accused has



not stated anything about the pledging of the vehicle, receipt of money, issuance of cheque, repayment and consequently, assurance of the complainant to return the cheque and also the existence of Ex.D1, receipt, document sought to be sent to the handwriting expert.

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8. In view of the above, there is no manifest illegality in the impugned order warranting interference. Hence, this Criminal Revision Case is dismissed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar.

To

Judicial Magistrate No.III, Salem

+1cc to Mr.B.Vasudevan, Advocate, S.R.No.4543

Cr1.R.C.No.68 of 2015

(CO)
krd(26/02/2015)