

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.06.2015

CORAM

THE HON'BLE MR.JUSTICE B.RAJENDRAN

CrI.R.C.No.1290 of 2010

and

M.P.No.1 of 2010

V.Nagaraj

... Revision Petitioner

Vs.

R.Kulandaivel

... Respondent

Criminal Revision Petition filed under Section 397 read with 401 of Criminal Procedure Code to set aside the order, dated 15.11.2010, made in C.M.P.No.3624 of 2010, in S.T.C.No.512 of 2009, on the file of Judicial Magistrate Court, No.I, Attur.

For Petitioner : Mr.T.Murugamanickam

For Respondent : No appearance

O R D E R

The petitioner herein is the accused in S.T.C.No.512 of 2009, on the file of Judicial Magistrate Court No.1, Attur.

2. The respondent/complainant has filed the aforesaid case against the petitioner, for offence under Section 138 of Negotiable Instruments Act, 1881, stating that the petitioner borrowed a sum of Rs.4,00,000/- for his personal and business expenses, and towards the discharge of the said amount, he issued a post dated cheque, dated 22.11.2008, bearing No.946968, drawn on Indian Bank, Attur Branch, and, when the cheque was presented for collection, it was returned unpaid for the reason that account was closed, and after issuing statutory notice, the complaint was filed against the petitioner.

3. The learned counsel appearing for the petitioner submitted that the petitioner has not issued any cheque to the respondent/complainant, as alleged by the respondent. The learned

counsel further submitted that, in the year 2002, both the petitioner and the respondent entered into a transaction, and in respect of the transaction, the petitioner has handed over four signed blank cheques as security, and though the amount borrowed by the petitioner was repaid, the respondent has not returned those blank cheques, and by misusing one of the cheques, the respondent has given false complaint against the petitioner, as if, the petitioner issued the cheque, dated 22.11.2008 for a sum of Rs.4,00,000/- towards the discharge of his liability. The learned counsel submitted that the petitioner has issued the cheques only as security towards the transaction that took place in the year 2002, and he has not filled-up the body of the cheque, and the body of the cheque was filled-up by the respondent/complainant to suit his own purpose. The learned counsel, therefore, submitted that the cheque has to be sent to Tamil Nadu Forensic Laboratory for obtaining Expert's opinion to find out difference between the ink used to write the body of the cheque and that of the signatures found in the cheque, and for that purpose, petitioner filed C.M.P.No.3624 of 2010, under Section 45 of Evidence Act. The learned counsel also submitted that the petitioner should be granted fair opportunity to rebut presumption and he relied upon the judgment reported in (2007) 2 SCC 258 in re (Kalyani Baskar Vs. M.S.Sampoornam) in support of his contention that, when there is difference in ink, the same could be ascertained only by Expert, and for that purpose, Petition was filed by the petitioner, and without appreciating the same, the Trial Court dismissed the Petition. Hence, the learned counsel prayed for allowing this Petition.

4. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

5. I am unable to accept the contentions of the learned counsel for the petitioner. In the judgment rendered by the Hon'ble Supreme Court in Kalyani Baskar's case, referred to supra, the accused disputed his signature in the cheque and also the fact that he issued the cheque to the complainant. In that context, it was held by the Hon'ble Supreme Court that sufficient opportunity must be given to the accused to rebut presumption and the cheque must be sent for comparison to find out whether the signature was that of the accused or not. Whereas, in the case on hand, the petitioner admitted his signature but denied that the writings in the body of the cheque were not that of his and according to the petitioner, to ascertain that the writings in the cheque were not that of his, the cheque has to be sent only for comparison.

6. According to me, when the issuance of cheque is admitted by the petitioner, even assuming that the body of the cheque was not

written by him/Drawer of the cheque, the cheque will not become invalid, and by issuing filled up cheque, the petitioner has given power to the holder of the cheque. Even assuming the case of the petitioner that the body of the cheque was not written by him, no purpose would be achieved by sending the same for comparison. All these aspects were properly considered by Court below and rightly dismissed the Petition, and I do not find any reason to interfere with the order of the Court below.

7. In the result, the Criminal Revision Petition is dismissed. Consequently, connected M.P. is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sd

To

1.The Judicial Magistrate, No.1,
Attur.

2.-do- Through The Chief Judicial Magistrate,
Salem

Crl.R.C.No.1290 of 2010
and
M.P.No.1 of 2010

MG(CO)
CA(22/07/2015)

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