

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2016

(Orders Reserved on : 20.07.2016)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Crl.R.C.No.784 of 2016

and

Crl.M.P.No.5836 of 2016

G.Karthikeyan

... Petitioner/Accused

Vs.

K.Senthil Kumar
Respondent/Complainant

...

Prayer: Criminal Revision Case filed under Sections 397 & 401 of the Code of Criminal Procedure, against the order dated 05.05.2016 made in C.M.P.No.No.2605 of 2016 in S.T.C.No.562 of 2015 on the file of the Judicial Magistrate, Fast Track Court No.I, Erode.

For Petitioner : Mr.M.Guruprasad
For Respondent : Mr.R.Ezhilarasan

ORDER

This Criminal Revision Case is directed against the order dated 05.05.2016 passed by the learned Judicial Magistrate, Fast Track Court No.I, Erode, in C.M.P.No.No.2605 of 2016 in S.T.C.No.562 of 2015, dismissing the petition filed by the petitioner under Section 45 of Indian Evidence Act, for sending the cheque-Ex.P.1 to a handwriting Expert to find out the alteration of year in the cheque.

2. The learned counsel for the petitioner/accused would mainly contend that in this case, the revision petitioner, who is an accused in S.T.C.No.526 of 2015, has filed a petition in C.M.P.No.2605 of 2016 before the trial Court for sending the cheque-Ex.P.1 for comparison and for getting handwriting

Expert's opinion. The said petition was dismissed by the trial Court and as against the said dismissal order, the present criminal revision case is preferred by the petitioner/accused. It is further contended that in the cheque in question, the year was altered by the respondent/complainant as 13.11.2010 instead of 13.11.2011. The learned counsel for the petitioner also contended that the revision petitioner had denied the execution of the disputed cheque and also the consideration. While being so, allowing the revision petitioner to seek Expert opinion would resolve the dispute and it will be helpful in deciding the case on hand. But, the trial Court, without considering the facts of the case, erroneously dismissed the petition filed by the petitioner and hence, the order passed by the trial Court has to be set aside and the Criminal Revision Case has to be allowed.

3. The learned counsel for the respondent/complainant would vehemently contend that the learned Magistrate, after considering the entire facts and circumstances of the case, correctly dismissed the petition filed by the petitioner. Therefore, there is no illegality or infirmity in the order passed by the trial Court and hence, the learned counsel prayed that the criminal revision case has to be dismissed.

4. In this case, the respondent herein/complainant has filed a complaint under Section 138 of the Negotiable Instruments Act against the revision petitioner before the learned Judicial Magistrate No.I, Erode, and the said complaint was taken on file as S.T.C.No.526 of 2015. According to the complainant, the revision petitioner/accused doing business in shares in the name and style of "Shri Balaji Wealth Management". He and the accused are friends and the accused requested him to invest the amounts in his Firm. The complainant agreed to invest a sum of Rs.25,00,000/- in the Firm of the accused and issued four cheques for Rs.25,50,000/- in favour of the "Shri Balaji Wealth Management". As assured, the accused, initially paid some amount to the complainant for his investment with him, but thereafter, the accused was not prompt in paying the amount as agreed. Hence, the complainant demanded the amount of Rs.25,00,000/-. To discharge the said liability, the revision petitioner/accused had issued a post dated cheque bearing No.491666 dated 13.11.2010 for Rs.25,00,000/- in favour of the complainant drawn on Bank of Maharashtra, Erode. The accused requested the complainant not to present the said cheque due to financial difficulty and asked to present the same on fourth week of April 2011. On 26.04.2011, with prior intimation to the accused, the complainant had presented the above said cheque for collection through his banker namely Axis Bank Ltd., Erode, but the said cheque was returned as 'Funds Insufficient'. Immediately, the complainant had issued a legal notice to the

accused and after that, he preferred a complaint under Section 138 of the Negotiable Instruments Act before the trial Court. According to the revision petitioner/accused, the correct date of issuance of cheque is 13.11.2011, but the year was altered as 2010. On a perusal of complaint, it is clear that the cheque in question was presented for collection during April 2011 itself and the cheque was returned as "Insufficient Funds" by the return memo dated 26.04.2011. Hence, the argument of the learned counsel for the petitioner that the correct date of cheque is 13.11.2011 and in the said cheque, the year was altered as 2010 instead of 2011 is not at all acceptable and the said argument is liable to be rejected. Further, in this case, the petition for comparing the cheque in question was filed by the revision petitioner/accused only after five years from the date of complaint. Hence, the argument of the learned counsel for the respondent that the said petition was filed only to drag on the proceedings is acceptable one. Further, the learned Magistrate, in his order, had specifically stated that on the face of it, there was no alteration in the cheque. In view of the above facts and circumstances of the case, this Court is of the considered view that there is no infirmity or illegality in the order passed by the learned Magistrate. This Court finds no reason to interfere with the order of the learned Magistrate which does not warrant any interference by this Court and hence, the criminal revision case is liable to be dismissed.

5. In the result, this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Jrl
To
The Judicial Magistrate,
Fast Track Court No.I, Erode.

+1cc to Mr.M. Guruprasad, Advocate, S.R.No.61291
+1cc to Mr.R. Ezhilarasan, Advocate, S.R.No.60928

cp(CO)
md(01/12/2016)

Cr1.R.C.No.784 of 2016