

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2016

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.R.C.No.999 of 2016

&

Crl.M.P.No.8027 of 2016

T.Sivaguru

.. Petitioner/Accused

vs.

N.Selvam

.. Respondent/Complainant

Criminal Revision filed under Section 397 and 401 Cr.P.C. against the order dt.20.06.2016, passed in C.M.P.No.200 of 2016 in C.C.No.216 of 2006 by the learned District Munsif cum Judicial Magistrate, Neyveli.

For Petitioner : Mr.Arumugam for
Mr.K.Sudhakar

For Respondent : Mr.A.Thiyagarajan

O R D E R

This revision challenges the order of the learned Munsif cum Judicial Magistrate, Neyveli, passed in C.M.P.No.200 of 2016 in C.C.No.216 of 2006.

2. Petitioner who is the accused in case pending trial for offence u/s. 138 and 142 of Negotiable Instruments Act, 1988 in C.C.No.216 of 2006, has moved C.M.P.No.200 of 2016 seeking stoppage of proceedings in the following circumstances

3. Petitioner initially had moved a petition seeking examination of the cheque by an expert. On such petition being dismissed, petitioner had moved a revision before this court which also was dismissed. Thereafter petitioner has moved C.M.P.No.7490 of 2010 towards calling for documents which bore the signature and which were contemporaneous to the cheque in question. Such petition was allowed under orders dated 03.01.2011. On the very next hearing date viz 21.01.2011, the cheque bearing number 814808 drawn on Canara Bank, Neyveli

branch was found missing. On finding the same untraceable an enquiry was ordered. Thereafter, reconstruction of the cheque was permitted and a certified copy thereof obtained from the available records, as complainant had filed a copy while filing the complaint. Petitioner has moved C.M.P.No.200 of 2016 seeking stoppage of proceedings in the case pending recovery of the original cheque. Against dismissal of such petition, present revision stands filed.

4. Heard learned counsel for petitioner and learned counsel for respondent.

5. Learned counsel for petitioner submits that the order calling for contemporaneous documents was passed in C.M.P.No.7490 of 2010 on 03.01.2011. On the very next hearing date viz., 21.01.2011 the cheque had gone missing. It had all along been the petitioner's case, he also having caused reply to the statutory notice, that the cheque had not been issued by him. The fact of the cheque going missing would go to show that a false case stands preferred against the petitioner. Learned counsel also informed paragraph 10 of the order under challenge could visit the petitioner with adverse consequences.

6. At first blush the contention of the learned counsel for petitioner seems attractive as the cheque having gone missing on the very next hearing date after a petition for comparison thereof with contemporaneous documents has been allowed raises suspicion. However, a reading of the complaint in the case informs that one of the documents filed therewith is the cheque in question. Therefore, there can be no difficulty in accepting the position that reconstruction has been effected there from. The reconstructed copy of cheque is available and the particulars thereof are in keeping with the statutory notice initially issued in the case and therefore, there need not be doubt that reconstructed cheque is indeed a true copy of the cheque upon which the complaint has been preferred. Once such position is arrived at, it follows that a comparison of the contemporaneous records produced before the Court below in keeping with its order in C.M.P.No.7490 of 2010 dated 03.11.2011 can well be effected with the cheque as reconstructed. Taking note of the apprehension of the learned counsel for petitioner, this Court would require the court below to treat paragraph 10 of its order as restricted to the disposal of C.M.P.No.200 of 2016 and that the observations made therein shall have no bearing on the merits in the final analysis in the case.

7. With the above observation, criminal revision shall stand dismissed. Court below is directed to dispose of the case

in C.C.No.216 of 2006 on its file expeditiously within a period of three months. Further taking into consideration, submission of learned counsel for petitioner that the petitioner is aged 68 years and suffers health complications, this Court directs the Court below to dispense with the personal appearance of petitioner before it, upon his swearing to an affidavit informing his address for service, that he duly would be represented by his counsel on all hearing dates, that he would, at no instance, dispute his identity and that, he would appear before the court below as and when required. Upon the petitioner doing so, the court below may seek the presence of petitioner before it, solely on the important hearing dates. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The District Munsif cum Judicial Magistrate,
Neyveli.

+1cc to Mr.K. Sudhakar, Advocate, S.R.No.74638
+1cc to Mr.A. Thiyagarajan, Advocate, S.R.No.74588

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md(27/01/2017)

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