IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.07.2008

Coram

The Honourable Mr. Justice K.MOHAN RAM

Crl. R.C.No.911 of 2008
and
M.P.No.1 of 2008

S.Thirulakshmi,Propreitor
M/s.S.T.Designs,Bangalore -68. .. Petitioner/Petitioner/Accused

vs.

M/s.Ramana Knittings rep. by its
Partner Vijayaraghavan,
Tirupur. .. Respondent/Respondent/Complainant

Revision under Section 397 r/w 401 of Criminal Procedure Code to call for the records relating to the order passed in C.M.P.No.4620 of 2008 in S.T.C.No.2700/2004 dated 17.06.2008 on the file of Judicial Magistrate No.II, Tiruppur and set aside the same.

For petitioner : Mr.AR.M.Arunachalam

O R D E R

The petitioner in the above revision is the accused in S.T.C.No.2700 of 2004 on the file of Judicial Magistrate No.2, Tiruppur. The petitioner is facing trial for an offence under Section 138 of Negotiable Instruments Act. The respondent is the complainant in that case. P.W.1 the complainant was examined and his evidence was closed and at the time when the petitioner/accused was to produce her defence witnesses, the petitioner filed Crl.M.P.No.2763 of 2007 to refer the disputed cheque to one K.Ramakrishnan, handwriting expert, retired Assistant Director (Documents), Forensic Sciences Department. The said petition was dismissed by the learned Magistrate and being aggrieved by that, the petitioner filed Crl.R.C.No.829 of 2007 before this Court and this Court by order dated 19.09.2007 allowed the revision and directed the learned Judicial Magistrate to summon the said handwriting expert to the Court to take photographs of the disputed documents and admitted documents containing the signature of the petitioner in her presence and to give his opinion within a short time. By the same order, the learned Judge directed the trial Court to dispose of the case within a period of two months. Thereafter, the petitioner has filed C.M.P.No.4620 of 2008 to send the cheques marked as Exs.P8 and P9 and the income tax returns marked as Ex.P28 filed on 1st November, 2004 by the complainant for the assessment year 2004-2005 to the Forensic Office, Chennai to get expert opinion. The said petition was opposed by the complainant/respondent herein inter alia contending that earlier the petitioner had filed a petition in Crl.M.P.No.2763 of 2007 seeking appointment of a handwriting expert and when the same was dismissed, the matter was taken up on revision before the High Court and this Court has allowed the revision and if the petitioner had been diligent enough, he could have included the present prayer in that petition itself. But with the intention to further drag on the proceedings, the present petition has been filed.

2.It was further contended by the respondent herein that there is absolutely no relevance regarding the handwriting contained in the income tax returns and the handwriting contained in the cheques and the Court itself has got ample power to compare the signatures. It was also contended by the respondent that the High Court while disposing Crl.R.C.No.829 of 2007 had fixed time limit for the disposal of the case and only to circumvent the direction, the present petition has been filed.

3.On a careful consideration of the contentions putforth on either side, the learned Magistrate rejected the said petition and being aggrieved by that, the above criminal revision has been filed.

4.Heard Mr.AR.M.Arunachalam, learned counsel appearing for the petitioner.

5.Learned counsel appearing for the petitioner submits that from the beginning, the petitioner/accused had been denying the signature in the disputed cheques Exs.P8 and P9 and as such, it is necessary to send the cheques in question for the opinion of the handwriting expert for comparing the writings contained in the cheques with the writings contained in Ex.P28 income tax returns filed by the complainant. Learned counsel for the petitioner further submits that unless such an opportunity is given to the petitioner, the petitioner will not be in a position to prove her defence in the case.

6.I have considered the said submission of the learned counsel for the petitioner.

7.At the outset, it is pertinent to point out that during the course of cross examination, P.W.1 has sated that he is not aware as to who filled up the cheques in question. Learned counsel for the petitioner fairly admits that no question has been put to P.W.1 in his cross-examination suggesting that the cheques in question were written and filled up by the complainant. When such a suggestion has not even been put to P.W.1 in the course of his cross-examination and it was not the case of the petitioner/accused anywhere that the cheques were written by the complainant, it is not known as to how it is necessary to send the cheques Exs.P8 and P9 and Ex.P28 income tax returns filed by the complainant to compare the writings contained therein with each other. The defence taken by the petitioner is that the cheques were not filled up by her and to prove the same, she has also filed a petition in Crl.M.P.No.2763/2007 and when the same was came to be dismissed, she has filed Crl.R.C.No.829 of 2007 and the same has been allowed as early as 19.09.2007. But as rightly pointed out by the learned Magistrate, the petitioner had not take any steps till 16.06.2008 to get the expert examine the documents pursuant to the order of this Court, which makes it abundantly clear the intention of the petitioner was only to drag on the proceedings. Not being satisfied with the delay already caused, the petitioner has once again chosen to file the present petition with untenable contentions, with a intention to further drag on the proceedings as pointed out above. Such a petition is absolutely not necessary and the comparison of the writings contained in Exs.P8 and P9 cheques with the writings contained in Ex.P28 income tax returns of the complainant is absolutely not necessary when not even a suggestion has been put to P.W.1 in the course of his cross-examination. Therefore, the reasonings recorded by the Court below for rejecting the petition filed by the petitioner cannot be said to be either erroneous or wrong. Since the trial Court has exercised its discretion in a judicious manner, this Court finds absolutely no reason to interfere with the said order. The trial Court is hereby directed to complete the trial of the case within a period of one month from the date of receipt of a copy of this order.

8.Since the case in S.T.C.No.2700 of 2004 is pending right from 2004 and the delay in disposing the case has occurred only due to dilatory tactics adopted by the petitioner herein and the present revision has also been filed with a view to further delay the disposal of the case, the above revision deserves to be dismissed with exemplary costs. Accordingly, the above criminal revision is dismissed with costs of Rs.5,000/-. The said costs of Rs.5,000/- shall be paid to the Tamil Nadu State Legal Services Authority, High Court, Madras on or before 10.08.2008. Consequently, connected M.P. is dismissed.

9.Post this matter on 11.08.2008 for 'reporting compliance'.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1.The Judicial Magistrate No.II, Tiruppur.

2.-do-thro Chief Judicial Magistrate,
Coimbatore.

3.The Secretary,
Tamil Nadu State Legal Services Authority,
Chennai.

4.The Section Officer,
Crl.Section, High Court, Madras (Post on 11.8.2008 for compliance)

+1cc to Mr.AR.M.Arunachalam, Advocate Sr 39579

PUR (CO)
km/4.8.

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