

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.O.P. No.24679 of 2016
and CrI.M.P.No.11867 of 2016

Prasathkumar

Petitioner

Vs

Muruganandam

Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the order passed in CMP No.1219 of 2016 in C.C.No.96 of 2011 dated 16.06.2016 on the file of the Judicial Magistrate I, Tindivanam and set aside the order passed by the Judicial Magistrate, Tindivanam.

For petitioner :Mr.A.Rajaganapathy

O R D E R

This petition has been filed to call for the records pertaining to the order passed in CMP No.1219 of 2016 in C.C.No.96 of 2011 dated 16.06.2016 on the file of the Judicial Magistrate I, Tindivanam and set aside the order passed by the Judicial Magistrate, Tindivanam.

2. Heard the learned counsel for the petitioner.

3. For the sake of convenience, the parties will be referred to by their name.

4. The complainant has launched a prosecution in C.C.No.96 of 2011 u/s 138 of the Negotiable Instruments Act before the Judicial Magistrate No.I, Tindivanam against the accused. During trial, the accused took a stand that he has signed the impugned cheque, but had not written the words thereon. Therefore, the accused wanted the cheque to be sent for handwriting expert for comparison. The accused filed CrI.M.P.No.1202 of 2013 before the trial Court, for a direction to send the impugned cheque along with admitted handwritings of the accused to the Forensic Sciences Department for comparison. The learned Magistrate allowed the petition on 04.11.2013. The accused was permitted to file his admitted handwritings relating to the period of cheque. The accused filed a Bill Book for being sent along with the impugned cheque to the Forensic Sciences Department for comparison.

<https://hcservices.ecourts.gov.in/hcservices/>

5. At that juncture, the complainant noticed that the

Bill Book has been created for the purpose of this case and therefore, raised an objection by filing CrI.M.P.No.1219 of 2016. The learned Magistrate heard both sides and by the impugned order, upheld the objection raised by the complainant on 16.06.2015, challenging which the accused is before this Court.

6. At the outset, this petition deserves to be dismissed on the short score of laches, inasmuch as the impugned order was passed as early as 16.06.2015 and more than a year later, this application has been filed before this Court u/s 482 Cr.P.C. However, this Court went into the impugned order, in order to find out whether the reasoning given by the learned Magistrate is perverse or illegal.

7. The learned counsel for the petitioner contended that the complainant should have challenged the earlier order dated 04.11.2013 in CrI.M.P.No.1202 of 2013 and without challenging that order, he cannot file the present petition. This argument has also been answered by the learned Magistrate by holding that, the complainant is not aggrieved with the order dated 04.11.2013, but the complainant is raising serious objections to the document that has been furnished by the accused for comparison. Therefore, this Court is in complete agreement with the reasoning given by the learned Magistrate. That apart, the learned Magistrate has also perused the Bill Book that was submitted by the accused and has given a finding that it has been created for the purpose of this case. It may be worthwhile to extract the findings of the Judicial Magistrate:

"This Court upon perusal of the original bill book submitted by the respondent is inclined to note that, they are only carbon copies of certain bills and the entire bill book is not completed and further the Bill Nos.110 and 111 are also carbon copies and hence in the view of the court, there cannot be any proper comparison of signatures with a carbon copy. An original writing in a cheque cannot be compared with a carbon copy of the writing and signatures of such party in the view of this court. Hence on such aspect this Court is of the view that, sending such document to forensic laboratory will only be a futile exercise. Hence this court is not inclined to send such document to forensic laboratory, and this court is inclined to allow this petition."

This Court is in complete agreement with the aforesaid finding and this Court places on record its profound appreciation for the Forensic acumen of the learned Judicial Magistrate No.I, Tindivanam.

In the result, this petition is devoid of merits and the same is dismissed. Consequently, connected miscellaneous petition is closed. Two weeks time from the date of receipt of a copy of this order is given to the accused to comply with the order dated 04.11.2013 in Crl.M.P.No.1202 of 2013 by submitting the admitted handwriting relating very closely to the cheque period to the satisfaction of the Judicial Magistrate No.I, Tindivanam. On failure, the trial Court is directed to ignore the order dated 04.11.2013 in Crl.M.P.No.1202 of 2013 and proceed to the next stage of the case. The trial Court shall obtain a bond for Rs.10,000/- from the accused without sureties u/s 88 Cr.P.C. and if the accused absconds, a fresh FIR can be registered u/s 229-A IPC.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gms

To

The Judicial Magistrate I, Tindivanam.

+ 1 cc to M/s. M. Kalyani, Advocate Sr.64825

Crl.OP No.24679 of 2016

RSI (CO)
Eu 22.12.16

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