

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2017

Coram

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Criminal Revision Case No.455 of 2017
and
Crl.M.P.No.4028 of 2017

G.Amanulla

..Petitioner

//vs//

Nilkamal Limited,
A limited company incorporated
Under the companies Act,
Having it's registered office
& factory at
Survey No. 354/2 and 354/3,
Rakholi - Dapada road, village
Vasona and also at Kharadpada,
Union territory of Dadar
and Nagar Haveli.

..Respondent

Criminal Revision Case filed under Section 397 and 401 of the Code of Criminal Procedure, to call for the records in connection with the order passed in Crl.M.P.No.587 of 2017 in C.C.No.3265 of 2014 dated 16.02.2017 by the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai-1 and set aside the same.

For Petitioner : Mr.P.Vijendran

For Respondent : Mr.B.Manoharan.

ORDER

Dismissing the application filed by the petitioner to send the disputed cheque for the purpose of getting expert opinion regarding the alteration of date and also the amount in the cheque, the present revision has been filed.

2. The petitioner is an accused in C.C.No.3265 of 2014 on the file of the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai for the offence under Section 138 of the Negotiable Instrument Act. The respondent/complainant filed a private complaint on the ground that the petitioner/accused purchased plastics crates(goods) from the complainant company and during the course of business, the petitioner has to pay a sum of Rs.1,01,982/- to the complainant, and in order to discharge his liability, he issued a cheque for a sum of Rs.1,00,000/-. When the cheque was presented before the drawee bank and the same was returned as insufficient of fund,

and after following the legal requirements, he has filed the complaint. The learned Metropolitan Magistrate taken cognizance of the offence and taken the matter on file in C.C.No.3265 of 2014.

3. Earlier, the petitioner filed an application to recall PW1 and that application was dismissed. Challenging the same, he has filed a petition in CrI.O.P.No.25401 of 2016 under Section 482 Cr.P.C. to set aside the above order. This Court, by order dated 15.11.2016, dismissed the said petition. Since the petitioner willing to settle the entire amount, four weeks time was granted to the petitioner to pay the amount. According to the petitioner, even though he has taken a demand draft for a sum of Rs.25,000/-, the complainant refused to receive the said demand draft. In the above circumstances, once again the trial was commenced and at that time the petitioner filed the present application on the ground that he has issued 10 cheques to the respondent/complainant for Rs.10,000/- each and he has also paid a sum of Rs.25,000/- to the respondent/complainant and only a sum of Rs.75,000/- remaining to be paid. Now, the respondent/complainant altered the amount as Rs.1,00,000/- and also altered the date in the cheque. Hence, he has filed an application for the following relief:-

- (i) To ascertain that whether all the number written in the amount by number in the cheque are written in same handwriting and same ink.
- (ii) to compare the signature with the amount by number and amount by letters in the cheque and
- (iii) to ascertain that any alteration taken place in the date of the cheque.

After hearing the parties, the Court below dismissed the said application. Challenging the said order of dismissal, the present Criminal Revision Case has been filed.

4. I have heard the learned counsel appearing for the petitioner and learned counsel appearing for the respondent and perused the materials available on record.

5. The learned counsel appearing for the petitioner would contend that on perusal of the cheque itself clearly shows that there is an alteration of the date in the cheque and the petitioner has given a cheque for a sum of Rs.10,000/-, but it has been altered into Rs.1,00,000/-. The Court below without considering the same, dismissed the petition stating that the petitioner has filed a petition only drag on the proceedings. Hence, he sought for allowing this criminal revision case.

6. Per contra, the learned counsel appearing for the respondent would contend that the petition has been filed by the petitioner in total abuse of process of law and the petitioner never raised any objection regarding the same at the earlier point of time and at the time of trial, he filed an application to recall P.W.1 and that application has been dismissed. Thereafter, the present application has been filed only in order

to drag on the proceedings and there is no bona fide in the petition filed by the petitioner and hence he sought for dismissal of the criminal revision case.

7. I have considered the rival submissions.

8. It is true that the petitioner came out of this application after commencement of trial and also after failed in his attempt to recall P.W.1. The petitioner being an accused and came out with the defence that the date in the cheque has been altered and he has issued a cheque for a sum of Rs.10,000/- only and it has been altered by the respondent/complainant as Rs.1,00,000/-, and there is no legal liability on him to pay Rs.1,00,000/- and already he has paid a sum of Rs.25,000/- to the respondent/complainant. In the above circumstances, without going into the merits of the matter, in order to given an opportunity to establish his defence and in the interest of justice, it is just and necessary, the cheque should be sent to an expert to find out whether any alteration in the cheque as alleged by the petitioner. Hence, the impugned order passed by the Court below is set aside and the Court below is directed to send the cheque to the Forensic Department, Chennai to ascertain following:-

(i) To ascertain that whether all the number written in the amount by number in the cheque are written in same handwriting and same ink.

(ii) to ascertain any alteration taken place in the date of the cheque.

Since already the trial has commenced, the Court below is directed to send the cheque to the Forensic Lab within a period of two weeks from the date of receipt of a copy of this order and get a report within a period of four weeks thereafter and after obtaining the report, the Court below is directed to complete the trial and dispose of the same on merits and in accordance with law within a period of two months thereafter. It is submitted that the original disputed cheque was returned to the respondent/complainant by the Court below and the respondent/complainant is directed to produce the cheque before the Court below in the next hearing date, namely, 02.05.2017.

9. With the above observation, the criminal revision case is disposed of. Consequently, connected Crl.M.P. is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

TO

1. The Metropolitan Magistrate,
Fast Track Court, No.IV,
George Town, Chenna-1.

2. The Public Prosecutor, High Court, Madras.

+ 1 cc to M/s. B.Manoharan, Advocate SR.23640
+ 1 cc to M/s. P. Vijendran, Advocate SR.24257

Crl.R.C.No.455 of 2017

NRI (CO)
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