

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Revision No.689 of 2017

and CrI.M.P.Nos.6600 and 6601 of 2017

K.R.Srinivasan

.. Petitioner

Vs

M/s.S.R.V.Earth Movers ,
Rep. by its Partner,
R.Varadarajan,
Ranga Complex,
1-6-19-D1,
Salem Main Road,
Sankari TALuk,
Salem District.

.. Respondent

Prayer:- Criminal Revision filed under Sections 397 and 401 Cr.P.C., to set aside the order passed in CrI.M.P.No.1024 of 2017 in S.T.C.No.7337 of 2013, dated 10.04.2017 on the file of the learned Judicial Magistrate No.I, Sankari.

For Petitioner : Mr.C.K.M.Appaji

For Respondent : Mr.M.Guruprasad

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O R D E R

The Criminal Revision Petition has been filed by the accused in S.T.C.No.7337 of 2013 challenging the order dated 10.04.2017 passed by the learned Judicial Magistrate No.I, Sankari dismissing the petition in CrI.M.P.No.1024 of 2017 filed under Section 45 (2) of the Evidence Act seeking to send for the disputed cheques to the Tamil Nadu Forensic Science Laboratory for comparison by a Handwriting Expert.

2.The brief case of the petitioner is as follows:

The respondent filed a complaint against the petitioner alleging that he is engaged in the business of transport and its allied business operations and that the petitioner is engaged in that of road formation and construction. The petitioner availed the transport services of the respondent. During the course of business

transactions, the petitioner used two heavy earth-movers and four tipper lorries of the respondent for his construction works, for which, he is due to pay a sum of Rs.20,00,000/-. In order to settle the dues, he issued cheques. When the cheques were presented for collection, they were returned as unpaid with an endorsement "payment stopped by the drawer". Hence, the respondent issued a legal notice dated 07.11.2013, for which, the petitioner issued a reply notice dated 21.11.2013. Even after the service of legal notice, the petitioner has not come forward to settle the cheque amount. Hence, the defacto complainant filed a complaint against the petitioner. The learned Magistrate took cognizance of offence under Section 130 of Negotiable Instruments Act and charge was framed against the petitioner. He denied the same as false. He was put on trial. After completion of examination of witnesses on the side of the complainant, the petitioner was questioned under Section 313 Cr.P.C. At that stage, the petitioner filed the present petition seeking to send for the alleged disputed cheques to the Tamil Nadu State Forensic Sciences Laboratory, Chennai for Expert opinion so as to prove as to whether the name mentioned in all the three cheques i.e. SRV Earth Movers and dates contained in the cheques were written by the petitioner/accused himself or by some other persons. The learned Magistrate, after having heard both sides, dismissed the said petition on the ground that at the time of questioning under Section 313 Cr.P.C., the petitioner did not raise any such plea and the learned Magistrate has further held that if once the petitioner admitted his signatures in the cheques in question, the same need not be sent for getting expert's opinion. Aggrieved by the said order, the accused is now before this Court with the present revision.

3. I have heard Mr.C.K.M.Appaji, learned counsel appearing for the petitioner and Mr.M.Guruprasad, learned counsel appearing for the respondent.

4. The learned counsel for the petitioner submitted that the accused has never denied the fact that the cheques have been issued by him to the respondent to settle the hire charges for availing the services of two Earth Moving Machines and four Tipper Lorries of the respondent for his construction works without mentioning the name of the person or company and date. According to the accused, the name of the respondent Company and the cheque dates would have been subsequent to the handing over of the same to the complainant. Apart from that, there is no business transaction between the respondent and the petitioner. Hence, the petitioner has to prove the genuineness of the cheques, but the trial Court has failed to take note of the facts and without properly considering the plea of the accused, the trial Court dismissed the petition.

5. The learned counsel for the respondent/complainant has submitted that at the belated stage, the petitioner filed a

petition in CrI.M.P.No.1024 of 2017 in S.T.C.No.7337 of 2013 to send for the cheques to the Forensic Laboratory for getting expert opinion. The learned counsel further submitted that the legal notice was issued only after the dishonour of the cheques, for which, the petitioner issued a reply wherein, he has admitted that the cheques have been issued by him and at the time of recording the oral evidence, he has not raised any objection about the genuineness of the cheques. Even at the time of questioning under Section 313 Cr.P.C., he has not raised any such plea. When the petitioner himself admitted his signatures on the disputed cheques, he had no right to raise any such plea or objection. This Court is of the view that only to drag on the proceedings, the petitioner come forward with such plea and the learned Magistrate has rightly dismissed the petition. Hence, he prayed to dismiss the criminal revision petition.

6.I have considered the rival submissions carefully.

7.The petitioner has never denied his signatures on the cheques in question which were issued towards discharge of the legal liability. The petitioner now raised a plea that the name and the dates found on the cheques in question were not filled by his own handwritings. It was never the case of the petitioner that he handed over the blank cheques to the respondent. The petitioner, when questioned under Section 313 of Cr.P.C., at a belated stage, had raised a plea that the name and the dates found on the cheques were not filled of his own hand writings and came forward with a petition seeking to send for the cheques in question for comparison by a handwriting expert. This Court does not find any justification in the plea of the petitioner. By impugned order, the trial Court has rightly dismissed the petition in which this Court does not find any illegality or irregularity and the revision deserves for dismissal.

In the result, the Criminal Revision is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

To

- 1.The Judicial Magistrate No.I,
Sankari.
- 2.The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.Mr.M.Guruprasad Advocate SR.NO.43401

CrI.R.C.No.689 of 2017