

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

Crl. Revision Case No.88 of 2017
and

Crl.M.P.No.973 of 2017

1. Greenbay Food Products Private Ltd.,
rep. by., Managing Director,
K.K.Sivachandar,
S/o. Kandasamy,
No.61, Kalliyankattu Pudhur,
Vaniputhur(TP),
Gopichettipalayam, Erode (DT).
 2. K.K.Sivachandar,
S/o. Kandasamy,
Managing Director,
Greenbay Food Products Private Ltd.,
No.61, Kalliyankattu Pudhur,
Vaniputhur(TP),
Gopichettipalayam,
Erode (DT).
- ... Petitioners/Accused

Versus

S.Marimuthu ... Respondent/Complainant

Criminal Revision Case filed under Section 397 r/w 401 of the Criminal Procedure Code to call for the records relating to the order dated 03.01.2017 made in C.M.P.No.2843 of 2016 in S.T.C.No.155 of 2016 on the file of the learned Judicial Magistrate, Fast Track Court, Tiruchengode and set aside the same by allowing the Criminal Revision Petition.

For Petitioner : Mr.V.Anandhamurthy

For Respondent : Mr.I.C.Vasudevan

O R D E R

The revision has been filed against the order of dismissal passed by the learned Judicial Magistrate, Fast Track Court, Tiruchengode, in C.M.P.No.2843 of 2016 in STC. No.155 of 2016 dated 03.01.2016.

2. The petitioners herein are accused in a private complaint filed under Section 138 of Negotiable Instruments Act. Earlier, the respondent/complainant filed a private complaint on the ground that the petitioner had borrowed a sum of Rs.10,00,000/- and in order to discharge the loan, he issued a cheque on 13.05.2010. When the said cheque was presented for collection, it was returned on the ground of "insufficient funds", thereafter, he filed a private complaint. The above complaint was referred to Mega Lok Adalat and in the Lok Adalat, there was a settlement between the parties and the petitioner agreed to pay a sum of Rs.4,50,000/- and pursuant to the above settlement, the petitioners had issued a cheque. Since the cheque was also not honoured, he filed the present complaint. Pending complaint, the petitioners/accused disputing the signature found in the cheque, had filed an application under Section 45 of the Evidence Act to send the cheque to a hand writing expert to compare the signature found in the cheque with his admitted signature. Since the admitted signature is subsequent to the issuance of the cheque, the court below dismissed the application holding that the admitted signature, which was subsequent to the issuance of the cheque cannot be compared with the disputed cheque. Now challenging the same, the present revision has been filed.

3. The learned counsel appearing for the petitioners would submit that the petitioner is a vendor in the registered sale deed dated 05.12.2011, and he has put his signature in the sale deed, and the document is prior to the date of cheque, and that document may be sent for comparing the signature.

4. Mr. I.C.Vasudevan, learned counsel appearing for the respondent submits that it is only pursuant to the settlement arrived at the Lok Adalat, the petitioner has issued a cheque and it is not open to him to dispute the signature found in the cheque. Apart from that the trial has also been commenced and at this stage, the petitioner had filed the application in order to drag on the proceedings.

5. I have heard the submissions on both sides and also perused the materials available on records carefully.

6. Without going to the merits of the rival contentions, since the petitioners are disputing the signature found in the cheque and in order to give an opportunity to the petitioners/accused, to prove their defence and in the interest of justice, it is just and necessary that the cheque should be sent for comparison of the signature. Since the learned counsel for the petitioners submit that a registered sale deed available with them, which is dated 05.12.2011, and is prior to the issuance of the cheque, the petitioner is directed to file the original sale deed dated 05.12.2011, before the Court below and on filing such sale deed, the court below is directed to send the disputed cheque along with the above sale deed for comparison by an expert.

7. The petitioner is directed to file the sale deed dated 05.12.2011, within a period of two weeks from the date of receipt of a copy of this order and thereafter the court below is directed to send the disputed cheque along with the sale deed to the hand writing expert and get opinion within a period of four weeks, after obtaining opinion, the court below is directed to proceed with the trial and complete the same within a period of two months thereafter.

8. With the above observation, the Criminal Revision Case is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mrp
To

The Judicial Magistrate,
Fast Track Court,
Tiruchengode.

+1cc to M/S.V.Anandhamoorthy, Advocate Sr.23417
+1cc to M/S.I.C.Vasudevan, Advocate Sr.23620

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