



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 06.03.2017
CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.O.P. (MD) No.463 of 2017
and
CRL.M.P. (MD) No.410 of 2017

Madhi : Petitioner

-Vs-

Dhanapal : Respondent

PRAYER: Petition is filed under Section 482 of the Criminal Procedure Code to call for the records and set aside the order dated 26.12.2016 passed in Cr.M.P.No.6066 of 2016 in C.C.No.389 of 2013 on the file of the Learned Judicial Magistrate/ Fast Track Court (Magisterial Level), Thoothukudi, Thoothukudi District.

For Petitioner : Mr.A.Thiruvadikumar
For Respondent : Mr.S.Muthumalai

O R D E R

Madhi launched a prosecution in C.C.No.389 of 2013 against Dhanapal before the Learned Judicial Magistrate/ Fast Track Court (Magisterial Level), Thoothukudi, Thoothukudi District, for an offence under Section 138 of the Negotiable Instruments Act. During the course of trial, two witnesses were examined on behalf of Madhi, the complainant and they were cross-examined. The accused was examined under Section 313 of the Code of Criminal Procedure. The accused filed an application before the learned Magistrate for a direction to send the impugned cheque along with certain documents containing the admitted signature of the accused for comparison and report. The Trial Court allowed the application and sent the disputed cheque with the admitted signatures of the accused to the Handwriting Expert for comparison. The report received from the Handwriting Expert was in favour of the accused. Thereafter, the complainant has filed Cr.M.P.No.6066 of 2016 in C.C.No.389 of 2013 under Section 311 of the Code of Criminal Procedure for once again examining P.W.1, which was dismissed by the Trial Court, by order dated 26.12.2016, challenging which, the complainant is before this Court.



2. Heard Mr.A.Thiruvadikumar, learned counsel for the petitioner and Mr.S.Muthumalai, learned counsel appearing for the respondent.

3. On a reading of the petition filed by the complainant in Cr.M.P.No.6066 of 2016, it is seen that the same is bereft of even the minimum particulars that are required for a Trial Court to exercise powers under Section 311 of the Code of Criminal Procedure.

4. However, Mr.A.Thiruvadikumar, learned counsel for the petitioner contended that since the accused had obtained a report in his favour, it has become incumbent on the complainant to rebut the same.

5. In the considered opinion of this Court, that cannot be a good reason to entertain the request of the complainant, inasmuch as the rule of evidence is that the complainant should prove the case beyond reasonable doubt. There is also a presumption under Section 139 of the Negotiable Instruments Act against the accused and in favour of the complainant in a prosecution under Section 138 of the Negotiable Instruments Act. When with great difficulty, the accused had surmounted the statutory presumption, it will be a travesty of justice, if the complainant is permitted to adduce rebuttal evidence at a belated stage.

6. In the result, this Criminal Original Petition is devoid of merits and accordingly, the same is dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (RTI)

/True copy/

Sub Assistant Registrar

To
The Judicial Magistrate/ Fast Track Court
(Magisterial Level), Thoothukudi,
Thoothukudi District.

+1 CC to M/s.THIRUVADIKUMAR, Advocate, SR No. 12934
+1 CC to M/s.MUTHUMALAIRAJA, Advocate, SR No. 12711
SML/mrn
PSM/SV-MMS/10.03.2017/2P/4C