



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08 .06.2017

CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Cr1.RC(MD)No.151 of 2017

and

CRL MP(MD)No.1513 of 2017

Orders Reserved on 03.04.2017

M.Muniyasamy

: Petitioner

Vs.

P.Murugan

: Respondent

Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records in Cr.M.P.No.396 of 2017 and set aside the orders passed in Cr.M.P.No.396 of 2017, dated 23.01.2017 in C.C.No.205 of 2014, on the file of the learned Fast Track Judicial Magistrate, Thoothukudi.

For Petitioner : Mr.K.A.Raamakrishnan

For Respondent : Mr.A.Thiruvadi Kumar

ORDER

The Revision Petitioner herein is the accused in C.C.No.205 of 2014 pending on the file of the learned Judicial Magistrate / Fast Track Court, Thoothukudi. The respondent herein is the complainant, who filed the above said case under Section 138 of Negotiable Instruments Act, against the Revision Petitioner on the basis of the dishonored cheque, which belongs to the Revision Petitioner for Rs.1,35,000/-. After the Revision Petitioner was examined D.W.2 in the said case, the Revision Petitioner filed Cr.M.P.No.396 of 2017 before the trial Court under Section 45 of the Indian Evidence Act, for sending the disputed cheque to the Forensic Laboratory, for ascertaining the signature found in the said cheque of the Revision Petitioner herein. The trial Court has dismissed the said Cr.M.P.No.396 of 2017, after hearing both sides vide its order dated 23.01.2017.

pertaining to the impugned order dated 23.01.2017 passed by the learned Judicial Magistrate / Fast Track Court, Thoothukudi, in Cr.M.P.No.396 of 2017 and to set aside the same.

3. On perusal of the impugned order this Court finds the following points for dismissal by the trial Court.

(i). The petitioner / accused has not chosen to give any reply notice after receipt of the statutory notice given by the complainant / respondent.

(ii). The petitioner / accused has not disputed the signature found in the impugned cheque in his counter in Cr.M.P.No.3024 of 2011 filed by the Complainant / Respondent, for condoning the delay of 22 days in filing the complaint, under Section 138 of Negotiable Instruments Act, before the learned Judicial Magistrate, Thoothukudi and the petitioner has taken a defence that he gave the disputed cheque to one Michel Raj, who is the relative of the complainant, for a hand loan and by misusing that cheque, the present petition was filed by the respondent herein.

(iii). The petitioner has not taken steps at the earlier stage of this case, since this case initiated in the year 2011.

4. Perused the materials on record and carefully considered the rival submissions made by either counsel.

5. Admittedly, the disputed cheque belongs to the Revision Petitioner issued from his Bank Account and was dishonored by the Bank, as 'Account Closed'. It is further admitted that the Revision Petitioner has disputed the signature found in the impugned cheque during cross-examination of P.W.1 / Complainant and also in the evidence of P.W.2, who is the Revision Petitioner. The Revision Petitioner has not admitted that he has not send any reply to the statutory notice given by the complainant. The counsel for the Revision Petitioner has referred the decision of the Principal Bench of of this Court in **P.Gnanambigai Vs. S.Krishnasamy and Another** reported in **[(2011) 2 MLJ (Cr1) 590]** for the proposition that *"mere failure of the accused to reply the statutory notice and to enter the witness box will in no way affect the merit of the defence raised on the side of the accused"*.

6. The learned counsel appearing for the respondent produced a copy of the counter statement filed by the Accused / Petitioner herein in Cr.M.P.No.3024 of 2011 filed by the complaint under Section 142(B) of the Negotiable Instruments Act, for condoning the delay of 22 days in filing the complaint under Section 138 of Negotiable Instruments Act, before the concerned Court and contended that the Revision Petitioner has not denied the signature found in the impugned cheque in the said counter and also the accused took a defence that the impugned cheque was given to one Michel Raj, as security, for hand-loan received by the Accused /



Revision Petitioner herein and the said cheque was misused by the complainant, who is close relative to him, after the loan was repaid, but the cheque was not returned to the Revision Petitioner.

7. On perusal of the said counter statement it is not stated there that signed and unfilled cheque was given by the Revision Petitioner to the said Michel Raj, as contended by the complainant in this case. Further, the said Criminal Miscellaneous Petition was confined only, issue of condoning the delay in filing the complaint at the pre-cognizance stage and hence, the counter allegation of the Revision Petitioner do not support the case of the Complainant in respect of the alleged admission of the signature found in the cheque in question.

8. Lastly, the counsel for the respondent contend that the Revision Petitioner filed the petition relating to the impugned order at the fag end of the trial solely to protract the proceedings. The counsel for the petitioner would submit that the trial Court should have granted the relief, since the accused was entitled to rebut the case of the complainant and he could not be convicted without any opportunity being given to the Accused / Revision Petitioner to present his evidence and such denial of the said opportunity would lead to an unfair trial. The learned counsel in support of his contention, relied upon a decision of the Hon'ble Supreme Court in **Kalyani Baskar (Mrs.) Vs. M.S.Sampoornam (Mrs.)** reported in **[(2007) 1 Superme Court Cases (Cri) 577]** in which it is held as follows:-

that Para 12" Section 243 (2) is clear that a Magistrate holding an inquiry under the Cr.P.C. in respect of an offence triable by him does not exceed his powers under Section 243(2) if, in the interest of justice, he directs to send the document for enabling the same to be compared by a hand-writing expert because even in adopting this course, the purpose is to enable the Magistrate to compare the disputed signature or writing with the admitted writing or signature of the accused and to reach his own conclusion with the assistance of the expert. The appellant is entitled to rebut the case of the respondent and if the document viz. the cheque on which the respondent has relied upon for initiating criminal proceedings against the appellant would furnish good material for rebutting that case, the Magistrate having declined to send the document for the examination and opinion of the hand-writing expert has deprived the appellant of an opportunity of rebutting it. The appellant cannot be convicted



without an opportunity being given to her to present her evidence and if it is denied to her, there is no fair trial. 'Fair trial' includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial."

9. In this case on hand also, the Revision Petitioner / Accused requests the trial Judge for sending the Cheque in question for the opinion of the Handwriting Expert, after the respondent has closed his evidence. The Magistrate / Trial Court having declined to send the cheque for examination and opinion of Handwriting Expert has deprived the accused of an opportunity of rebutting it. Adducing evidence in support of the defence is a valuable right and denial of that right means denial of fair trial.

10. It is admitted that the signature found in the cheque in question was denied by the accused in the cross-examination of the Complainant / P.W.1. Once the genuineness of the signature on the cheque in question is denied by the other party, the complainant is bound to prove it at first instance by taking proper proceedings. No offence can be established against the accused by the complainant, unless he proves on record that the cheque in question bears the signature of the accused.

11. Considering the above facts and circumstances of the case, this Court is inclined to allow this Revision by setting aside the order passed by the learned Judicial Magistrate / Fast Track Court, Thoothukudi in Cr.M.P.No.396 of 2017, dated 23.01.2017.

12. In the result, this Criminal Revision is allowed and the order passed by the learned Judicial Magistrate / Fast Track Court, Thoothukudi in Cr.M.P.No.396 of 2017, dated 23.01.2017, is set aside. The learned Magistrate is directed to send the cheque in question for getting expert opinion in respect of the disputed signature through an Advocate Commissioner appointed by the trial Court. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar



To

1.The Judicial Magistrate,
Fast Track Court,
Thoothukudi.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

3.The Record Keeper,
Vernacular Section
Madurai Bench of Madras High Court.

+1 cc to Mr.K.A.Raamakrishnan, Advocate in SR.No. 59056

+1 cc to Mr.A.Thiruvadi kumar , Advocate in SR.No. 59123

MPK

AE/JC/SAR4/16.06.2017/5P/6C

Order made in
Cr1.RC(MD)No.151 of 2017

Dated:-
08.06.2017