

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1481 of 2013 & M.P.No.1 of 2013
and
Crl.R.C. No.1482 of 2013 & M.P.No.1 of 2013

A. Sabeena Parveen ...Petitioner in both revisions

Vs.

A. MuraliRespondent in both revisions

Prayer in Crl.R.C.No.1481 of 2013: The Criminal Revision filed under Sections 397 and 401 of Code of Criminal Procedure to call for records relating to the order dated 25.10.2013 in C.M.P. No.3757 of 2013 in S.T.C.No.54 of 2013 on the file of Judicial Magistrate-cum-Fast Track Court, Hosur and set aside the same.

Prayer in Crl.R.C. No.1482 of 2013: The Criminal Revision filed under Sections 397 and 401 of Code of Criminal Procedure to call for records relating to the order dated 25.10.2013 in C.M.P. No.3756 of 2013 in S.T.C.No.53 of 2013 on the file of Judicial Magistrate-cum-Fast Track Court, Hosur and set aside the same.

For Petitioner : M/s.AL.Ganthimathi (in both revisions)
For Respondent : Mr.D.Ramesh Kumar (in both revisions)

COMMON ORDER

This criminal revision cases have been filed to call for the records relating to the order dated 25.10.2013 in C.M.P.Nos.3757 & 3756 of 2013 in STC No.54 & 53 of 2013, on the file of the learned Judicial Magistrate-cum-Fast Track Court, Hosur and set aside the same.

2. The respondent filed private complaints against the revision petitioner under section 200 Cr.P.C. for the offence under Section 138 of Negotiable Instruments Act. The respondent is the complainant in STC. No.54 and 53 of 2013 and the respondent filed private complaints before the learned Judicial Magistrate-cum-Fast Track Court, Hosur under Section 200 Cr.P.C. for the offence under Section 138 of NI Act. After completing the legal formalities, during enquiry, the respondent was examined as P.W.1. At that time, the revision petitioner filed petitions under Section 45 of Indian Evidence Act, to send the cheques to compare the signatures along with the signature found in the transfer certificate of the revision petitioner. The said petitions were numbered as C.M.P.Nos.3757 & 3756 of 2013. The learned Magistrate after hearing both sides, dismissed both the petitions. Challenging the same, the petitioner has filed these two revision cases.

3. The learned counsel for the petitioner/accused would submit that the petitioner has not issued any cheque in favour of the respondent. Signatures were found in the two cheques are not that of the petitioner. Therefore, if the cheques are sent for examination by hand writing expert, to be compared with admitted signature of the petitioner found in transfer certificate, genuineness of the signature found in the cheques could be ascertained. However, the learned Magistrate has not considered the plea taken by the petitioner and dismissed the petitions. Hence, the impugned orders need interference by this Court.

4. The learned counsel for the respondent/complainant would submit that even after receipt of statutory notice, the petitioner has neither repaid the cheques amount nor sent any reply. Therefore, he filed private complaints before the learned Magistrate under Section 138 of NI Act. Till the respondent entered into the witness box and got himself examined, the petitioner has not filed any such petitions in earlier occasions. It shows that the petitions filed by the revision petitioner are not bonafide. In order to delay the proceedings, he has invoked the provision under Section 45 of Indian Evidence Act belatedly. The learned Magistrate has rightly pointed out that there is no merit in the petitions. These petitions are also liable to be dismissed.

5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. It is not in dispute that the respondent filed two complaints before the learned Judicial Magistrate (Fast Track Court), Hosur in STC. No. 54 of 2013 and 53 of 2013 in which the petitioner was shown as accused. The case of the respondent is that the petitioner has borrowed a sum of Rs.15,00,000/- for which two cheques were issued to the respondent. The cheques were presented in bank for encashment and the same were dishonored. Thereafter, the respondent sent a statutory notice. The petitioner has neither sent a reply nor repaid the money. Till the respondent/P.W.1 came to the box, he has not filed the said petitions. A careful reading of the records show that the revision petitioner received the notice sent by the respondents. But he has not sent any reply. Further, the petitioner has not filed any other petition or memo to inspect the cheques after receiving summons from the Magistrate as to whether the signatures found in the cheques matching with the admitted signature. He had not taken any steps immediately. The petitioner should have sent a reply on receipt of the Statutory notice. The admitted signature found in the transfer certificate is of the year 2005. Whereas, the disputed signatures found in the cheques are of the year 2012. The petitioner has not taken any steps at the earlier stage of the proceedings. Further it is settled proposition of law that disputed signature has to be compared with the admitted signature which should have been put prior to the disputed documents during the relevant point of time. In this case, the time gap is more and the admitted document is during the school period and vakalath is filed after

receiving the summon. Therefore, sending the said documents will not serve the purpose.

7. In the result, the revisions are dismissed. Consequently, the connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Judicial Magistrate-cum-
Fast Track Court, Hosur.

Copy to : The Section Officer, Criminal Section,
High Court of Madras.

+1 cc to M/s.AL.Ganthimathi, Advocate Sr.No. 75460

+2 cc to Mr.D.Ramesh Kumar, Advocate SR.No.75056

Crl.R.C.No.1481 of 2013 & M.P.No.1 of 2013
and Crl.R.C. No.1482 of 2013 & M.P.No.1 of 2013

KS(C.O.)

AKM/ 16.08.19/ 3P-6C /

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