



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.R.C.NO.388 OF 2013

AND

M.P.NO.1 OF 2013

M.C.Thangamuthu

...Petitioner/Respondent

Vs.

C.Manivannan

...Respondent/Petitioner

Prayer:

This Criminal Revision case filed under Section 397 and 401 of Code of Criminal Procedure, to set aside the order of dismissal dated 22.02.2013 made in C.M.P.No.6292 of 2012 in C.C.No.44 of 2012 on the file of the Judicial Magistrate, Fast Track Court No.I, Erode.

For Petitioner : Mr.M.Guruprasad

For Respondent : No appearance

O R D E R

This Criminal Revision has been filed by the petitioner against the dismissal order dated 22.02.2013 passed by the Judicial Magistrate, Fast Track Court No.I, Erode in C.M.P.No.6292 of 2012 in C.C.No.44 of 2012.

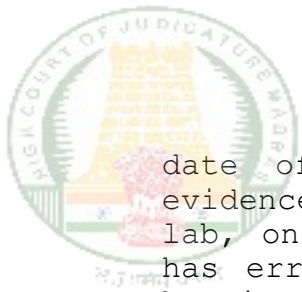
2. The petitioner has filed a private complaint against the respondent under Section 138 of Negotiable Instruments Act before the learned Judicial Magistrate III, Erode. After completing legal formalities, the complaint was taken on file in C.C.No.44 of 2012. Before the trial Court, on the side of the complainant, in order to prove the case, P.W.1 to P.W.7 were examined and Ex.P1 to Ex.P4 were marked. On the side of the accused no witness was examined and no document was marked. In the said case, the respondent/accused filed a petition in C.M.P.No.6292 of 2012 under Section 45 of Indian Evidence Act, seeking to send the original cheque/Ex.P1 to the Handwriting Expert, Forensic Lab, to obtain the Expert Opinion. The trial Court, after giving due opportunities to both the parties, had allowed the petition.



4. The learned counsel for the petitioner would submit that the respondent/accused has admitted the signature found in the cheque and he has not denied the issuance of the cheque. During the cross examination, the respondent/accused has put nothing about the alteration of the date of cheque. After completion of the 313 proceedings, at the time of defense evidence, he has filed the petition under Section 45 of the Indian Evidence Act, which clearly shows that only to protract the case, the respondent has filed the petition to send the cheque for expert opinion in C.M.P.No.6292 of 2012, on the file of the learned Judicial Magistrate, Fast Track Court-I, Erode.

6. The case of the petitioner/complainant is that respondent/accused has borrowed a sum of Rs.5,00,000/- from the complainant, for which the petitioner issued two post dated cheques bearing Nos.269777 and 269778 in favour of the petitioner. The petitioner presented the cheque bearing No.269778, dated 30.08.2009 before his Bank for encashment and the same was returned as 'Funds insufficient'. Thereafter, the petitioner has sent a notice to the respondent on 22.09.2009. But the respondent issued a reply notice on 10.10.2009 with false allegations. After receiving the legal notice, the respondent failed to repay the cheque amount. Hence, the petitioner/complainant filed a private complaint under Section 138 of Negotiable Instruments Act, before the learned Judicial Magistrate III, Erode. After completing legal formalities, the complaint was taken on file in C.C.No.44 of 2012. During trial, the respondent/accused filed a petition in C.M.P.No.846 of 2012 seeking to send the original cheque to the Handwriting Experts, to obtain the opinion from the expert. According to the respondent, the cheque dated 30.03.2009 has been altered by the petitioner/complainant into 30.08.2009.

7. On a perusal of the entire records, it reveals that the respondent/accused has admitted his signature and only disputed the recitals of the cheque. Hence, he sought to send the disputed cheque to the Forensic Department to find out the hand writing. However, when the respondent/accused has admitted his signature found in the disputed cheque, it is for him to prove that the cheque was not issued towards discharge of legally enforceable debt. It is always open to him to prove his defence during trial in the manner known to law. The alteration of the



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date of cheque can be proved through oral and documentary evidence for which the disputed cheque need not send to forensic lab, once he admitted that the issue of cheque. The trial Court has erroneously dismissed the petition filed by the respondent herein.

8. This Court is in agreement with the submissions made on behalf of the petitioner and is also of the considered view that prejudice would be caused to the respondent/complainant, if the disputed cheque is sent for getting opinion of the forensic experts.

9. In view of the above, the impugned order passed by the learned Judicial Magistrate, Fast Track Court No.I, Erode in C.M.P.No.6292 of 2012 in C.C.No.44 of 2012, dated 22.02.2013, is hereby set aside.

10. In the result, the Criminal Revision is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rli

To

1. The Judicial Magistrate,
Fast Track Court No.I, Erode.
2. The Chief Judicial Magistrate,
Erode.

Copy To

The Section Officer,
Criminal Section,
High Court, Madras-104.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.70753

+1cc to Mr.D.Balachandran, Advocate, S.R.No.70377

Cr1.R.C.No.388 of 2013

RV(CO)

CS/17/09/2019