

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 09.10.2018
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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.61 of 2018

Sabarinathan ... Petitioner

Vs.

A.Venkateshkumar ... Respondent

Prayer:

Criminal Revision Case filed under Sections 397 r/w 401 of the Criminal Procedure Code seeking to set aside the order passed in STC No.86 of 2017 on the file of Judicial Magistrate Fast Track I, Erode, order dated 08.01.2018.

For Petitioner : Mr.Veeraraghavan

For Respondent : Mr.I.C.Vasudevan

O R D E R

This criminal revision has been filed seeking to set aside the order dated 08.01.2018 passed in C.M.P.Nos.6307 and 6308 of 2017 in S.T.C.No.86 of 2017 by the learned Judicial Magistrate, Fast Track Court No.I, Erode.

2.The petitioner is the accused and the respondent is the defacto complainant. For the sake of convenience, the parties will be hereinafter referred to as 'accused' and 'complainant'.

3.The complainant initiated proceedings under Section 138 of the Negotiable Instruments Act in S.T.C.No.86 of 2017 before the learned Judicial Magistrate, Fast Track Court No.I, Erode, against the accused stating that the accused borrowed a sum of Rs.7,50,000/- for his urgent requirement and issued three post dated cheques for Rs.2 Lakhs, Rs.3 Lakhs and Rs.2 Lakhs (totally Rs.7 Lakhs) and promised to pay a sum of Rs.50,000/- by cash. Thereafter, the accused repaid a sum of Rs.50,000/- by way of cash as promised by him. However, the cheques when presented by the complainant for collection returned as 'insufficient funds'. Thereafter the complainant issued legal notice to the accused on 09.12.2016 and the said notice returned as 'unclaimed'.

4.While trial was under progress, the accused filed petition under Section 45 of the Indian Evidence Act seeking to send the instrument for expert opinion and petition under Section 91 of Cr.P.C. seeking for a direction to file the account opening form of the petitioner and 10 nos. of cheque leaves which were already passed in the account of the petitioner through the Bank Manager in C.M.P.Nos.6307 and 6308 of 2017. After adjudication, the said petitions were dismissed by the trial Court. Aggrieved by the same, the present revision has been filed.

5.The learned counsel appearing for the petitioner submitted that the petitioner/ accused did not issue any cheque in favour of the respondent/ complainant. He would further submit that blank cheques were handed over to the complainant for security purpose and the said cheques were filled and signed by the complainant in order to implicate the petitioner in the stringent provisions of the Negotiable Instruments Act. Hence, the petitioner filed the above said petitions. However, the said petitions were dismissed by the trial Court on the ground that when the petitioner himself admitted the issuance of the cheques to the complainant in I.P.No.3 of 2017 before the Sub Court, Dharapuram, it is not necessary to send the instrument for expert opinion.

6.The learned counsel appearing for the petitioner further submitted that though the petitioner/ accused issued cheques and pronote to the complainant, they were blank cheques issued for security purposes. Hence, it is just and necessary to send the instrument for expert opinion in order to disprove the case of the complainant. Accordingly, he prayed for allowing the revision.

7.Per contra, the learned counsel appearing for the respondent produced a copy of the petition filed under Sections 7, 9, 10(1) and 13(1) of the Provincial Insolvency Act, by the petitioner in I.P.No.3 of 2017 before the Sub Court, Dharapuram and submitted that in the said petition, the petitioner has admitted the issuance of cheques and pronotes in favour of the complainant. He would further submit that on one hand admitting the liability and on the other hand denying the liability is unsustainable. Accordingly, he prayed for dismissal of the revision.

8.Heard the arguments advanced on either side and perused the materials available on record.

9.On a perusal of the copy of the petition filed by the petitioner in I.P.No.3 of 2017 before the Sub Court, Dharapuram, it is clearly known that the petitioner has issued three blank cheques amounting to a sum of Rs.7 Lakhs and pronotes to the respondent. The above fact is mentioned in serial no.1 of the Schedule (Liabilities) as follows:

S.No.

Name of Creditors

Nature of document

Amount Rs.

1

A.Venkateshkumar, Jeeva Electronics, No.9, Vadamalai Street, Brough Road, Erode Town, Erode.
Blank 3 cheques drawn on ICICI Bank, No.016037, 016038 and 016039 and pronotes
7,00,000/-

10.Perusal of the impugned order discloses that after elaborate discussions and after proper adjudication, the petitions filed by the petitioner under Section 45 of the Indian Evidence Act seeking to send the instrument for expert opinion and under Section 91 of Cr.P.C. seeking for a direction to file the account opening form of the petitioner and 10 nos. of cheque leaves which were already passed in the account of the petitioner through the Bank Manager in C.M.P.Nos.6307 and 6308 of 2017 were dismissed by the trial Court on the ground that when the petitioner himself admitted the issuance of cheques to the complainant in I.P.No.3 of 2017 before the Sub Court, Dharapuram, it is not necessary to send the instrument for expert opinion.

11.When the petitioner himself admitted in the I.P. proceedings that he has issued three cheques to the complainant, I do not find any error in the order passed by the trial Court. This criminal revision is accordingly dismissed.

12.It is made clear that this Court has not expressed any opinion on the merits of the case. The facts discussed in this order is only for

M.DHANDAPANI,J.

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deciding the revision. The learned Judicial Magistrate, Fast Track Court No.I, Erode, shall proceed with the trial in S.T.C.No.86 of 2017, without being influenced by any of the observations made in this order and shall decide the matter independently, based on the records and in accordance with law.

13.The criminal revision case is accordingly dismissed.

09.10.2018

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

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

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