

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.10.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.24421 of 2018
and CRL.M.P.No.13869 of 2018

S.Karthikeyan

Petitioner/Accused

Vs

M.Shivakumar

Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., praying to set aside the impugned order passed in Crl.M.P.No.1116 of 2017 in S.T.C.No.1146 of 2015 dated 21.08.2017 on the file of the learned Judicial Magistrate No.V, Salem.

For Petitioner : M/s.K.V.Law Firm

O R D E R

For the sake of convenience, the parties are be referred to as accused and complainant.

2.It is the case of the complainant that the accused borrowed a sum of Rs.10,00,000/- on 06.01.2015 and another sum of Rs.10,00,000/- on 06.02.2015, towards which he gave the two impugned cheques which when presented had dishonoured. The complainant issued a statutory notice dated 06.07.2015 and in reply, the accused has given a notice dated 23.07.2015. Since the accused did not make the payment, the complainant has initiated a prosecution in S.T.C.No.1146 of 2015 before the Judicial Magistrate-V, Salem against the accused under Sections 138 and 142 of the Negotiable Instruments Act. After receipt of summons, the accused appeared and he was questioned under Section 251 Cr.P.C. The accused denied the acquisition. The complainant examined himself as P.W.1 and has filed proof affidavit. Even before cross-examination began, the accused filed Crl.M.P.No.1116 of 2017 in S.T.C.No.1146 of 2015 under Section 91 read with Section 243 Cr.P.C for a direction to the complainant to produce certain documents. The Trial Court after hearing both sides has dismissed Crl.M.P.No.1116 of 2017 on 21.08.2017, challenging which the accused filed Crl.R.C.No.38 of 2017 before the II Additional Sessions Court, Salem. The learned II Additional Sessions Judge has dismissed Crl.R.C.No.38 of 2017 on the short ground that a revision petition cannot be maintained as against an interlocutory order. Therefore, the accused is before this Court.

3. Heard the learned counsel for the accused who submitted that the accused has not had any transaction with the complainant and therefore, the complainant should be directed to produce the necessary documents as prayed for in Crl.M.P.No.1116 of 2017 for the accused to discharge the burden under Section 139 of the Negotiable Instruments Act.

4. This Court gave its anxious consideration to the submissions of the learned counsel for the accused.

5. At the outset, it should be stated that though Section 139 of the Negotiable Instruments Act casts a burden on the accused, yet the initial burden is on the complainant to prove the ingredients of the offence under Section 138 of the Negotiable Instruments Act. In this case, the complainant has only filed his proof affidavit as P.W.1 and he has not yet been cross examined by the accused. That apart, in the State of Orissa Vs. Debendra Nath Padhi 2004 AIR SCW 6813, the Hon'ble Supreme Court has stated that a fishing enquiry cannot be done via Section 91 Cr.P.C. In fact, the Trial Court itself has stated that if required the Court itself can compare any disputed signature with that of the admitted signature under Section 73 of the Indian Evidence Act. In such view of the matter, this Court does not find any infirmity in the order passed by the Trial Court warranting interference.

6. Hence, this petition is dismissed with liberty to the petitioner to raise all the grounds during the cross examination of P.W.1. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

gsa

To

The Judicial Magistrate No.V,
Salem.

+ 1 cc to M/s. K.V. Law Firm, Advocate Sr.71768

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