

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2018

CORAM :

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

Cr1.O.P.No.23416 of 2018

R.Manish Hathiramani

.. Petitioner

Vs

G.D.Ranka

.. Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order dated 07.07.2018 made in C.M.P.No.504 of 2018 in C.C.No.1543 of 2013 on the file of the Fast Track Court III, Metropolitan Magistrate, Saidapet.

For Petitioner : Mr.K.S.Karthik Raja

O R D E R

This Criminal Original Petition filed has been filed to set aside the order dated 07.07.2018 made in C.M.P.No.504 of 2018 in C.C.No.1543 of 2013 on the file of the Fast Track Court III, Metropolitan Magistrate, Saidapet, Chennai.

2. The petitioner is facing prosecution in C.C.No.1543 of 2013 before the Fast Track Court-III, Metropolitan Magistrate, Saidapet, Chennai, for the offence under Section 138 of the Negotiable Instruments Act. It is the case of the complainant that on 04.11.2011, A1 and A2 approached for a short term loan for a sum of Rs.3.33 crores; they came personally to Chennai and received the amount; when the complainant demanded for repayment of the amount, the accused came to Chennai and issued an impugned Cheque dated 04.01.2013, for a sum of Rs.4,02,93,000/- drawn on City Bank, Kolkata Branch, which account being a joint account of A1 and A2. The complainant presented the cheque on 04.01.2013 and to his shock and surprise, the accused had issued instructions to the bank to stop payment and therefore, the cheque was dishonoured on 07.01.2013. The complainant issued a statutory notice on 23.01.2013 to the accused for which, there was no reply from the accused.

3. Thereafter, the complainant initiated prosecution in C.C.No.1543 of 2013 against the two accused namely, the present petitioner herein (A1) and his father Ramesh Hathiramani (A2), on the ground that the impugned cheque was issued from a joint account. On receipt of summons, A1 and A2 filed a quash application in Crl.O.P.No.17328 of 2013, disputing the very issuance of the cheque and contending that the cheque was stolen at Kolkatta, for which, an FIR in Crime No.80 of 2013 has been registered by Park Street Police Station, against the complainant/respondent herein. The accused also took the defence that the cheque was issued from a joint account held by A1 and A2, however, only one person has signed the cheque and therefore, the non signatory cannot be made liable. This Court did not go into other contentions of the accused, however, quashed the prosecution as against Ramesh Hathiramani (A2).

4. Trial began in C.C.No.1543 of 2013 with examination of P.W.1. In the cross examination of P.W.1, Manish Hathiramani (A1)/petitioner herein, took the defence that the impugned cheque was not signed by him and it was stolen by the complainant, which assertion the complainant denied. Therefore, the accused filed Crl.M.P.No.504 of 2018 in C.C.No.1543 of 2013 under Section 45 r/w.73 of the Indian Evidence Act, to send the impugned cheque, along with the admitted signature of A1, to a handwriting expert for his opinion. The said petition was dismissed by the trial Court by its impugned order dated 07.07.2018, challenging which, Manish Hathiramani (A1) is before this court.

5. Heard Mr.K.S.Karthik Raja, learned counsel for the petitioner/A1, who submitted that the trial Court had dismissed the petition on the wrong premise that the High Court, in order dated 26.08.2013 made in Crl.O.P.No.17328 of 2013, has given a finding that the impugned cheque was signed by A1. Whereas, the High Court's order was subsequently modified and that finding has been deleted from the said order. Hence, the dismissal of the petition, made by the trial Court deserves to be interfered with.

6. This Court gave its anxious consideration to the submissions made by Mr.K.S.Karthik Raja.

7. It is true, that the trial Court had proceeded on the premise that the High Court had given a finding in Crl.O.P.No.17328 of 2013 that the impugned cheque was signed by Manish Hathiramani (A1). However, on a perusal of the order dated 26.08.2013 made in Crl.O.P.No.17328 of 2013, it is seen that the said portion has been deleted by the High Court, on the mention made by the accused.

8. Be that as it may, now, it has to be seen as to whether that the order passed by the trial Court refusing to send the impugned cheque to the handwriting expert deserves interference by this Court. It is the specific case of the complainant that the accused came to Chennai and gave the impugned cheque dated 04.01.2013; the cheque was presented on 04.01.2013 and it was stopped on the ground "'Payment stopped by Drawer'"; the complainant issued a statutory notice dated 23.01.2013, which was received by the accused.

9. Had the complainant stolen the cheque from the accused, the accused would have sent the reply notice to that effect. However, Mr.K.S.Karthik Raja submitted that the accused had already lodged a complaint to the Kolkatta Police. It is seen that the accused has filed an application under Section 156(3) Cr.P.C. before the Magistrate and on the direction of the Magistrate, the FIR has been registered against the complainant in Crime No.80 of 2013, for the offences under Sections 403, 415, 467, 468, 471, 504 and 506(ii) IPC. That cannot be a good reason to justify the failure of the accused to issue a reply notice to the statutory notice issued by the complainant. Even, in the letter given to the bank for stopping the payment, the accused has not stated that the cheque leaf was stolen and that is why, he is issuing such a letter to stop payment. Also, in the cross examination of P.W.1, the accused has not even stated the date, on which the P.W.1 had entered the shop of the accused and stolen the cheque.

10. In such view of the matter, this Court does not find any infirmity in the order passed by the trial Court warranting interference, of course, not on the grounds mentioned in the impugned order, but, for the aforesaid reasons.

Hence, this Criminal Original Petition is dismissed. It is always open to the accused to adduce collateral evidence to establish his defence.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

mkn

To

1. The Metropolitan Magistrate,
Fast Track Court No.III,
Saidapet, Chennai.

2. The Public Prosecutor,
High Court, Madras.

+1 cc Mr.S.Karthik Raja, Advocate, SR.No. 68529

CrI.O.P.No.23416 of 2018

BR
CSL/25.10.2018



WEB COPY