

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C No.1088 of 2018

and Crl.M.P.No.12706 of 2018

K.Suresh
Petitioner/Complainant

Vs

M.Mohanraj ... Respondent/Accused

Prayer:- Criminal Revision filed under Sections 397 and 401 Cr.P.C., to call for the entire records pertaining to the order dated 28.06.2018 made in C.M.P.No.1891 of 2018 in STC No.326 of 2017 on the file of the learned Judicial Magistrate, Fast Track Court No.I, Erode and set aside the same.

For Petitioner : Mr.N.Manokaran

O R D E R

The criminal revision petition has been filed to call for the entire records pertaining to the order dated 28.06.2018 made in C.M.P.No.1891 of 2018 in STC No.326 of 2017 on the file of the learned Judicial Magistrate, Fast Track Court No.I, Erode and set aside the same. सत्यमेव जयते

2.The brief facts leading to filing this revision are as follows :-

The respondent/accused borrowed a sum of Rs.5,00,000/- on 06.11.2016 as loan from the petitioner/complainant and agreed to pay interest for his family and business expenses. To discharge the said liability, the respondent issued an instrument/cheque bearing No.000009 drawn on Lakshmi Vilas Bank, M.N. Palayam Branch, dated 15.05.2017 for Rs.5,00,000/-. Subsequently, the respondent committed default. Hence, the petitioner issued a legal notice dated 23.05.2017 and filed a complaint against the respondent. The said complaint was taken on file in S.T.C.No.326

of 2017 by the learned Judicial Magistrate, Fast Track Court, No.I, Erode, wherein, the respondent has entered appearance and denied his liability. After completion of the evidence, the respondent filed CrI.M.P.No.1890 of 2018 to reopen the case. The respondent also filed C.M.P.No.1891 of 2018 under Section 45 of the Indian Evidence Act to get an expert opinion. Both the petitions were allowed on 28.06.2018. Feeling aggrieved by the order dated 28.06.2018 passed in C.M.P.No.1891 of 2018 in S.T.C.No.326 of 2017, the present criminal revision petition has been filed.

3.The learned counsel for the petitioner submitted that the respondent in his cross examination has stated that he has not given any instrument to the petitioner and he did not know him and he fraudulently obtained the cheque from the brother of the respondent. But, contrarily, the respondent filed C.M.P.No.1891 of 2018 in S.T.C.No.326 of 2017 to send the instrument to the Handwriting Expert to compare the signature in the instrument along with the admitted signature. The learned Judicial Magistrate, without considering the facts and circumstances of the case, erroneously allowed the petition by appointing an Advocate Commissioner and directing him to send the instrument along with the admitted signature to the Hand writing Expert for getting opinion with cost of Rs.10,000/- payable to the Advocate Commissioner.

4.The learned counsel for the petitioner further submitted that the respondent at the fag end of the case, filed C.M.P.No.1891 of 2018 in S.T.C.No.326 of 2017 with an intention to drag on the proceedings and the order of lower to send the instrument for expert opinion is against the principle of ante litem motam. At this stage, no document can be sent to the Handwriting Expert to get an opinion along with the admitted signature and the document could be sent along with instrument prior to the date of the disputed instrument. Hence, the learned counsel for the petitioner requested this Court to set aside the impugned order. He further submitted that unless the admitted signature prior to the instrument is sent for expert opinion, no purpose would be served. Accordingly, he prays for necessary direction to the lower Court to consider the matter afresh.

5.Heard the learned counsel for the petitioner and perused the materials available on record.

6.In view of the limited prayer sought for by the petitioner, notice to the respondent is not necessary as no prejudice would be caused by ordering the criminal revision petition at the stage of admission itself. Hence, notice to the respondent is dispensed with.

7.Considering the limited scope of the prayer sought for by the petitioner, this Court is inclined to close the criminal revision petition with the following clarification:

"The learned Judicial Magistrate is directed to send the disputed instrument for comparison along with the document with the admitted signature, which is prepared prior to the instrument and to get an opinion from the Hand writing expert within stipulated time."

With the above clarification, the criminal revision petition is closed. The order dated 24.09.2018 passed by the learned Judicial Magistrate, Fast Track Court No.I, Erode is set aside. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

cla

To

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

+1 cc Mr.N.Manokaran, Advocate, SR.No. 66420

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RSI (CO)
CSL/26.10.2018

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