



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 05.01.2018

CORAM:
THE HONOURABLE MR.JUSTICE P.N.PRAKASH
Crl. R.C.(MD)No.132 of 2017

P.Ponnusamy ... Petitioner / Petitioner / Accused
-Vs.-

N.Subramanian ... Respondent /Respondent/Complainant

Prayer: Criminal Revision Case - filed under Section 397 r/w 401 Cr.P.C., to call for the records pertaining to the order dated 30.11.2016 made in Cr.M.P.No.1819 of 2015 in C.C.No.193 of 2013 on the file of the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Karur and set aside the same.

For Petitioner : Mr.R.Sundar Srinivasan
For Respondent : Mr.ARL Sundaresan
Senior Counsel
M/s.Mr.A.L.Ganthimathi

O R D E R

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

2. It is the case of the complainant that the accused borrowed Rs.5,00,000/- (Rupees Five Lakhs only) from the complainant by way of cash and executed a pro-note in favour of the complainant agreeing to repay the amount with interest at the rate of Rs.1 per Rs.100/- per month. In discharge of such liability, the accused gave a cheque dated 22.02.2013 for Rs.5,00,000/- (Rupees Five Lakhs only) drawn on Karur Vysya Bank Limited, Mulanur Branch. The complainant presented the cheque for clearance and the cheque, drawn on Karur Vysya Bank Limited, Mulanur Branch, was returned unpaid for the reason "Drawers signature differ" and "Funds insufficient".

3. The complainant issued a statutory notice, dated 28.03.2013, to the accused and the notice has been returned as "The addressee went out of station and hence unable to serve". Since the accused did not make payment, the complainant initiated a prosecution in C.C.No.193 of 2013 under Section 138 of the Negotiable Instruments Act against the accused before the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Karur. During the pendency of the prosecution, the accused has filed a petition in Cr.M.P.No.1819 of 2015 stating that he is disputing his signature in the cheques and, therefore, the cheques should be sent



to the Hand-Writing Expert for comparison with the admitted signature of the accused. The trial Court heard the accused and the complainant and dismissed the petition in Cr.M.P.No.1819 of 2015 in C.C.No.193 of 2013 on 30.11.2016, against which, the accused has filed the present Criminal Revision Case.

5. Mr.R.Sundar Srinivasan, learned counsel for the accused contended that the accused should be given an opportunity to disprove the case and show that the cheque was not executed by him. He further submitted that the accused has got a right to fair trial and this right still stands stifled, if an opportunity to prove that the cheque was not signed by him is denied.

6. Per contra, the learned counsel for the complainant refuted the contention.

7. This Court gave its anxious consideration to the rival submissions.

8. It is true that every accused has got a fundamental right to fair trial. However, right to fair trial does not mean indefinite adjournment without anything more. In this case, the cheque was dishonoured on two grounds namely, "Drawers signature differ" and "Funds insufficient". The prosecution was filed in the year 2013. The accused had enough opportunities. Even when he was questioned under Section 313 Cr.P.C., he could have denied the signature in the cheque or he could have easily taken out the application at the threshold. Therefore, the trial Court was right in holding that the present petition was only to protract the proceedings and lacks *bona fide*. Since this Court does not find any illegality or infirmity in the order passed by the trial Court, this Revision stands dismissed. Consequently, the connected Miscellaneous Petition is dismissed.

9. The trial Court is directed to dispose of the C.C.No.193 of 2013 on the file of the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Karur, within a period of three months from the date of receipt of a copy of this order, provided the accused co-operates with the trial.

Sd/-

Assistant Registrar(AD-I)

/True copy/

Sub Assistant Registrar

To
The Judicial Magistrate,
Fast Track Court at Magisterial Level,
Karur.

+1cc to Mr.A.L.GANTHIMATHI, Advocate, SR.40724

CrI. R.C. (MD) No.132 of 2017
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