



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

WEB COPY

Crl. R.C.(MD)No.196 of 2017andCrl. M.P.(MD)No.1765 of 2017P.Ponnusamy
Accused

... Petitioner / Petitioner / Sole

-Vs.-

M.Gunasekaran

... 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.1817 of 2015 in C.C.No.365 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.V.Perumal

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.50,00,000/- (Rupees Fifty Lakhs only) from the complainant by way of cash and executed a pro-note dated 09.11.2011 in favour of the complainant agreeing to repay the amount with interest at the rate of Rs.1.50 per Rs.100/- per month. In discharge of such liability, the accused gave a cheque dated 27.06.2013 for Rs.25,00,000/- (Rupees Twenty Five Lakhs only) drawn on Karur Vysya Bank Limited, Mulanur Branch and another cheque dated 27.06.2013 for Rs.25,00,000/- (Rupees Twenty Five Lakhs only) drawn on ICII Bank, Dharapuram Branch. Thus, the total value of the two cheques is Rs.50,00,000/- (Rupees Fifty Lakhs only). The complainant presented both the cheques for clearance and the cheque, drawn on ICII Bank, Dharapuram Branch, was returned unpaid for the reason "Payment Stopped". Similarly, the cheque, drawn on Karur Vysya Bank Ltd., Mulanur Branch, was returned unpaid for the reason "insufficient funds".

3. The complainant issued a statutory notice, dated 05.07.2013, to the accused, in response to which, the accused sent a reply notice dated 10.07.2013. Since the accused did not make payment, the complainant initiated a prosecution in C.C.No.365 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. The accused appeared before the Magistrate and he was questioned about the substance of the accusation against him. The accused denied the same. The complainant filed a proof affidavit on 26.06.2014 and he closed his evidence. The Court examined the accused under Section 313 Cr.P.C. about the incriminating circumstances, for which, the accused filed an application under Section 311 Cr.P.C. to recall P.W.1 and P.W.2, which was allowed by the Magistrate on 12.08.2014.

4. The case was posted on 25.08.2014, 18.09.2014, 08.10.2014, 15.10.2014, 06.11.2014, 21.11.2014 and 19.12.2014 for cross-examination of P.W.1 and P.W.2 by the accused. The accused did not choose to cross-examine P.W.1 and P.W.2. On 19.12.2014, the accused filed a memo stating that he has filed a petition to transfer the case to Dharapuram before this Court in CrI.O.P.(MD) No.21057 of 2014. This Court dismissed the petition on 03.02.2015. After disposal of CrI.O.P.(MD) No.21057 of 2014, when the trial Court posted the case for cross-examination of P.W.1 and P.W.2 on 16.04.2015, on that date, the accused has filed a petition in Cr.M.P.No.1817 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.1817 of 2015 in C.C.No.365 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 will stand stifled, if an opportunity to prove that the cheques were 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 cheques were dishonoured on two grounds namely, payment stopped and insufficient funds. 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 cheques or he could have easily taken out the application at the threshold. He did not even choose to cross-examine P.W.1 and P.W.2 for two years. 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 C.C.No.365 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-II)

/True Copy/

Sub Assistant Registrar

To

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

+1cc to M/S.R.Sundar Srinivasan, Advocate SR.No. 40454

Crl. R.C.(MD)No.196 of 2017

SM

JM/JC/SAR 2/16.02.2018/3P/3C