

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON 08.11.2019	ORDERS PRONOUNCED ON 15.11.2019
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CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1351 of 2012
and
M.P.No.1 of 2012

S.Chandrasekaran

.. Petitioner/Respondent/Complainant

Vs

D.Jagadeesh

.. Respondent/Petitioner/Accused

Criminal Revision preferred under Sections 397 and 401 Cr.P.C. against the order passed in CMP No.5696 of 2012 in STC No.106 of 2011 dated 14.09.2012 on the file of the Judicial Magistrate, Fast Track Court No.II (Magistrate Level), Erode.

For Petitioner : Mr.A.K.Kumaraswamy

For Respondent : Mr.N.Manokaran

O R D E R

This Criminal Revision has been preferred challenging the order dated 14.09.2012 passed in CMP No.5696 of 2012 in STC No.106 of 2011 on the file of the Judicial Magistrate (Fast Track Court No.II, Magistrate Level), Erode.

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

3. It is the case of the complainant that he had money transactions with the accused and that on 15.12.2008, the accused borrowed Rs.4,00,000/- (Rupees four lakhs only) and promised to return the same on 14.02.2009. Therefore, the complainant deducted Rs.16,000/- (Rupees sixteen thousand only) in advance towards interest and gave the balance amount as loan. On the day of receiving the loan, the accused gave a post-dated

cheque for Rs.4,00,000/- (Rupees four lakhs only) dated 14.02.2009 drawn on Bank of Baroda, Sarkar Periyapalayam Branch, Tirupur. The complainant presented the cheque on 27.07.2009 in Syndicate Bank. But, the cheque was returned unpaid by memo dated 28.07.2009. Therefore, the complainant issued a statutory demand notice dated 10.08.2009 to the accused calling upon him to pay the cheque amount. The accused received the notice on 11.08.2009, but did not not comply with the demand. Therefore, the complainant initiated a prosecution in STC No.106 of 2011 before the Fast Track Court No.II, Erode, against the accused under Section 138 of Negotiable Instruments Act.

4. When the accused was questioned under Section 251 Cr.P.C, he denied the accusation.

5. Immediately thereafter, the accused filed CMP No.1828 of 2011 in STC No.106 of 2011 under Section 45 of the Evidence Act for the following relief :-

"This petition has been filed by the petitioner/accused under Section 45 of the Evidence Act seeking permission of this Court to send the disputed cheque to the Forensic Expert to find out the age of ink found in the impugned cheque dated 14.02.2009."

6. After hearing either side, the trial Court, by order dated 06.02.2011, dismissed the petition on the ground that the trial itself had not begun.

7. The trial began with the examination of complainant as PW.1, who was also cross-examined by the accused. After the complainant side was closed, the accused was questioned under Section 313 Cr.P.C., and at that time also, he did not explain as to how, his cheque came into the hands of the complainant. When the matter was posted for defence witness, the accused once again filed an application in CMP No.5696 of 2012 in STC No.106 of 2011 with the following prayer:-

"This petition has been filed by the petitioner to pass an order pending the Ex.P1 cheque which contains the disputed words, letters, numbers, signature to the expert opinion."

8. After hearing either side, the trial Court, by order dated 14.09.2012, allowed CMP No.5696 of 2012. Aggrieved by which, the complainant is before this Court.

9. Heard learned counsel for the petitioner/complainant and learned counsel for the respondent/accused.

10. Learned counsel for the petitioner submitted that the accused had merely suggested to the complainant in the cross-examination that he had not put the signature in the cheque and that has weighed with the trial Court for allowing the petition, which is not sustainable.

11. Per contra, learned counsel for the accused placed strong reliance on the Judgment of the Supreme Court (Kalyani Baskar ..vs.. M.S.Samboornam) (2007 (2) CTC 364) and submitted that for a fair trial, the defence should be given adequate opportunity under Section 243 (2) Cr.P.C. to rebut the prosecution case. He took this Court through para-12 of the said judgment, wherein the Hon'ble Supreme Court has stated so.

12. Now, it has to be seen whether, in the facts and circumstances of the case at hand, the order passed by the trial Court is sustainable.

13. In this case, the accused has received the statutory demand notice and has not chosen to give any reply. Of course, failure to give a reply by itself will not be a circumstance against the accused. The accused filed an application in CrI.M.P.No.1828 of 2011 for sending the cheque for determination of the age of the ink and not for comparison of the handwriting and signature therein with that of his. This petition was dismissed by the trial Court on 06.02.2011. In the cross-examination of the complainant (PW.1), the accused has merely denied his signature in the cheque, especially in the light of the assertion by the complainant that it was the accused himself who filled the cheque, affixed his signature and gave. However, in the cross-examination, the accused has not suggested as to how even the blank cheque came into the possession of the complainant. It is true that the accused was examined under Section 313 Cr.P.C., immediately after the examination-in-chief of the complainant, because in most of the cases, the complainant is not cross-examined after his examined in chief, but is recalled under Section 311 Cr.P.C after the accused is examined under Section 313 Cr.P.C. In the trial Courts, in this State, this has become the standard practice albeit the law laid down by the Supreme Court in "Vinoth Kumar ..vs.. State of Punjab". When the accused was questioned under Section 313 Cr.P.C. about the issuance of the impugned cheque, he could have easily stated the circumstances under which his blank cheque

went into the possession of the complainant.

14. Even in the petition in CMP No.5696 of 2012, the accused has not stated as to how his blank cheque came into the hands of the complainant. The complaint was filed in the year 2009 and after 4 years, the accused has filed the present petition. In "Kalyani Baskar" supra, the Bank Manager of the accused Bank had sated in the cross-examination that he had not verified the signature before returning the cheque in question. Such a situation does not obtain in this case. However, in this case, at the preliminary stage, the accused filed CMP No.1828 of 2011 to send the cheque for ink determination and not on the ground that he had not written and signed the cheque. Subsequently, he has filed the present petition without sufficient grounds thereof.

15. In the result, the order passed by the trial Court requires interference and accordingly, this Revision is allowed and the order dated 14.09.2012 passed in CMP No.5696 of 2012 in STC No.106 of 2011 by the learned Judicial Magistrate (Fast Track Court No.II, Magistrate Level), Erode, is hereby set aside. Consequently, connected Miscellaneous Petition is closed. Both parties are directed to appear before the trial Court on 20.12.2019 and the trial Court is directed to proceed with the trial in STC No.106 of 2011 and complete the same expeditiously.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate
Fast Track Court No.II (Magistrate Level)
Erode.
2. do Thro The Chief Judicial Magistrate,
Erode.

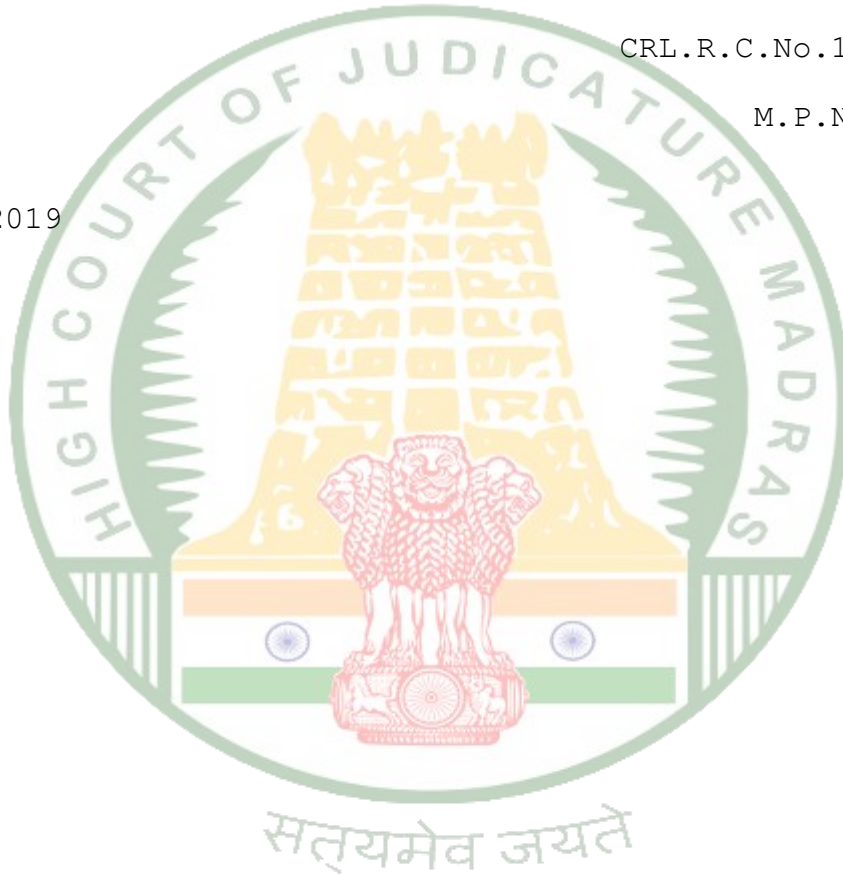
Copy to:

1. The Section Officer,
Criminal Section(Records),
High Court, Madras.

2. S.Chandrasekaran,
S/o.R.Subramani,
No.43, Kunnankattuvalasu,
60, Velampalayam Post,
Erode Taluk.
3. D.Jagadeesh,
S/o.Dhanakodi,
No.9, Nethaji Nagar 5th Street,
Uthukuli Road,
Tirupur.

CRL.R.C.No.1351 of 2012
and
M.P.No.1 of 2012

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