

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.935 of 2012

M.Sundarrajan ..Petitiner/Petitioner/Accused

Vs.

K.R.Palanisamy ..Respondent/Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the order dated 24.04.2012 in C.M.P.No.1118 of 2012 in C.C.No.55 of 2010 on the file of the Judicial Magistrate Court No.II, Mettur Dam.

For Petitioner : Mr.M.Nandakumar

For Respondent : Mr.P.Mani

O R D E R

This criminal revision has been filed seeking to set aside the order dated 24.04.2012 in C.M.P.No.1118 of 2012 in C.C.No.55 of 2010 on the file of the Judicial Magistrate Court No.II, Mettur Dam.

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

3. It is the case of the complainant that the accused was his close friend; the accused borrowed a sum of Rs.4,50,000/- on 10.04.2010, towards which, he gave a cheque dated 09.06.2010 bearing No.752950 drawn on Indian Overseas Bank, for the said amount; when the complainant presented the cheque, it was returned unpaid with the endorsement "Funds Insufficient" vide bank's return memo dated 12.06.2010; therefore, the complainant issued a statutory demand notice dated 24.06.2010, which was not received by the accused and hence, the postal cover returned to the complainant on 03.07.2010. Since the accused did not comply with the demand, the complainant initiated a prosecution in C.C.No.55 of 2010 before the Judicial Magistrate No.II, Mettur Dam.

4. The accused entered appearance and filed a petition in C.M.P.No.1118 of 2012 in C.C.No.55 of 2010 under Section 145 of the Evidence Act, to send the impugned cheque for handwriting

expert's opinion, on the ground that he has not filled up the cheque.

5. After hearing either side, the trial Court, by order dated 24.04.2012, dismissed C.M.P.No.1118 of 2012 in C.C.No.55 of 2010, aggrieved by which, the accused is before this Court.

6. It is seen that the accused has not denied his signature in the cheque, but, has only disputed the handwritings thereon. The fact remains that the accused has avoided the receipt of the statutory demand notice issued by the complainant.

7. In *Bir Singh Vs. Mukesh Kumar*¹, the Supreme Court has held as follows:

"33. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.

34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence."

8. In view of the above, this Court does not find any infirmity in the order passed by the trial Court, warranting interference.

In the result, this criminal revision is dismissed as being devoid of merits. In this case, this Court has not granted stay of the trial Court proceedings, but, the accused has been enjoying the benefit accruing from an order of stay, because,

¹ (2019) 4 SCC 197

the trial Court records have been called for by the Registry without any specific order of this Court. The Registry is directed to immediately return the original records to the trial Court.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The Judicial Magistrate No.II,
Mettur Dam.

Copy to : 1.The Deputy Registrar (Cr1.Side)
 Madras High Court, Chennai - 104.
 2.The Section Officer, Criminal Section,
 Madras High Court, Chennai - 104.

AKM/16.12.19 /3P-4C/

Cr1.R.C.No.935 of 2012