

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2019

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.RC.NO.698 OF 2018
AND
CRL.M.P.NO.8123 OF 2018

K.Rathinam

... Petitioner/Accused

Vs

M/s.Bright Engineers,
Rep. by its Partner, S.Somasundaram,
Son of R.Songappan, No.14,
Semmankulikattuvalasu, Avalpoondurai Post,
Erode - 638 115.

... Respondent/Complainant

The Criminal Revision Case filed under Section 397 and 401 of Cr.P.C, to set-aside the order dated 07.04.2018 in Crl.M.P.No.48 of 2018 in C.A.No.276 of 2017 on the file of the learned I Additional District & Sessions Judge, Erode.

For Petitioner : Mr.M.Guruprasad

For Respondent : Notice served -No Appearance

O R D E R

This Criminal Revision has been filed by the petitioner to set-aside the order dated 07.04.2018 in Crl.M.P.No.48 of 2018 in C.A.No.276 of 2017 on the file of the learned I Additional District & Sessions Judge, Erode.

2. The petitioner is accused and the respondent is complainant. The respondent/complainant filed a private complaint under section 200 Cr.P.C. against the revision petitioner, before the learned Judicial Magistrate (Fast Track Court No.1), Erode, which was taken on file in S.T.C.No.67 of 2016 for the offences under sections 138 and 142 of Negotiable Instrument Act. The learned Magistrate, after fulfilled trial, found the revision petitioner/accused guilty for the offence under section 138 of Negotiable Instruments Act and convicted

and sentenced him to undergo nine months simple imprisonment and to pay a fine of Rs.11,00,000/- as compensation to the respondent/complainant, in default, sentenced to undergo simple imprisonment for one month. As against the order of the trial Court, the revision petitioner/accused has filed a criminal appeal before the learned Principal Sessions Judge, Erode in C.A.No.276 of 2017.

3. During the pendency of the appeal, the petitioner has filed a petition in CrI.M.P.No.481 of 2018 under section 391 Cr.P.C, to re-open the case and recall the evidence P.W.1 for further cross examination with regard to the rental agreement. The learned Judge, after considering the matter, dismissed the miscellaneous petition on merits. Against the order made in CrI.M.P.No.48 of 2018 in C.A.No.276 of 2017, the petitioner/accused has filed a present revision case before this Court.

4. The learned counsel for the petitioner would submit that there is a business transaction between the petitioner and the respondent. During the year 2009 to 2011, the petitioner issued a blank cheque to the respondent as security and subsequently there was a dispute between them. Hence, the respondent misused the said cheque and filed a case against the petitioner. At the time of enquiry, no opportunity was given to the petitioner. Therefore, the petitioner wanted to cross examine the complainant further. Hence, both the Courts below have failed to consider the fact and erroneously convicted the petitioner, which warrants interference of this Court.

5. Although, notice has been served on the respondent, there is no appearance on behalf of the respondent/complainant, name has also been printed in the cause list. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

6. On a careful perusal of the complaint, it reveals that there was a money transaction between the respondent/complainant and the petitioner/accused. Admittedly, the petitioner has accepted the execution of the cheque as well as the signature found in the cheque. Apart from that the petitioner/accused has already filed a petition in C.M.P.No.4757 of 2016 before the trial Court for comparison and for expert opinion of the cheque and that petition was dismissed on 15.11.2016. Against the said findings, the petitioner has filed a petition in C.R.P.No.46 of 2016, the learned II Additional District Judge, Erode, dismissed on 19.12.2016. Against which, the petitioner has not preferred any appeal and the petitioner has no defence at all. In order to prolong the appeal, the petitioner has filed this petition and the petition is liable to be dismissed. Now the petitioner

cannot seek the additional evidence before the Session Court. When the petitioner admitted the execution of the cheque and the signature found in the cheque and denied the signature found in the cheque, the learned Magistrate negatived the claim of the petitioner. No doubt, the petitioner can invoke Section 391 of Cr.P.C. at appeal stage, if the document is necessary to decide the issue. In the present case on hand, the trial Court while dismissing the petition, has observed that the petitioner has admitted the execution and signature found in the cheque, the said section will not be helpful to the petitioner/accused.

7. This Court is of the view that all the points raised by the learned Counsel for the revision petitioner, can be raised before the appellate Court during the course of arguments.

8. In the result, the revision is dismissed. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The I Additional District & Sessions Court,
Erode.
2. The Judicial Magistrate,
(Fast Track Court No.I)
Erode.

+lcc to Mr.M.Guruprasad, Advocate, S.R.No.14861

Cr1.Rc.No.698 of 2018
and
Cr1.M.P.No.8123 of 2018

VGII(CO)
CS/19/12/2019
CS/30.12.2019