IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2019

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P No.10277 of 2019
in Crl.M.P.No.5322 of 2019

Yadhava Purshothama Dev
..Petitioner/ Accused

.Vs.

N.Yuvaraj ..Respondent/ Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records relating to the order dated 01.04.2019 passed in Crl.M.P.No.2058 of 2019, in C.C.No.643 of 2016, now pending on the file of the Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai - I, and to set aside the same.

For Petitioner : M/s.P.Raja
For Respondents : Mr.C.V.Kumar

ORDER

This Criminal Original Petition has been filed against the dismissal of the applications filed by the petitioner to re-open and to issue summons to the Branch Manager of HDFC Bank.

2. The petitioner is facing trial before the Court below for an offence under Section 138 of Negotiable Instrument Act. The complaint was taken cognizance in the year 2011 and later it was transferred to the learned Metropolitan Magistrate, George Town, Chennai, in the year 2016 and it was numbered as C.C.No.643 of 2016.

3. The proof affidavit of the complaint was filed on 04.01.2017 and he was also cross examined and thereafter the petitioner was questioned under Section 313 of Cr.P.C on 03.10.2018. The case was subsequently adjourned during various occasions for defence side witness and the petitioner examined himself as DW.1 and his cross examination was also completed on 12.02.2019. Since the petitioner did not file any other list of witnesses, the Court below closed the defence side evidence and posted the case for arguments. At that point of time, the petitioner had filed two applications. One application is for

sending the cheque for an expert opinion and the other application is to re-open the case and to issue summon to the Bank Manager, HDFC Bank, T.Nagar.

4. The Court below dismissed the applications on the ground that the petitioner had filed the applications only to drag on the proceedings and the petitioner never questioned the signature found in the cheque and the case has been pending from the year 2011 onwards.

5. The learned counsel for the petitioner submitted that the signature as found in the cheque, even to the naked eye, clearly reveals that it is a forged signature of the petitioner. The learned counsel submitted that the petitioner has to necessarily rebut the presumption under Section 139 of the Negotiable Instruments Act and therefore an opportunity must be given to the petitioner to send the cheque for expert opinion. The learned counsel further submitted that the petitioner must be permitted to summon the Bank Manager, in order to mark the specimen signature of the petitioner as found in the records maintained by the Bank.

6. Per contra, the learned counsel appearing for the respondent submitted that the petitioner never took a stand earlier that the signature of the petitioner has been forged in the cheque. The learned counsel brought to the notice of this Court the reply sent by the petitioner to the statutory notice, wherein, he had taken a specific stand that the complainant had taken away signed cheques by force and later had filled it up and used it up for filing the criminal complaint. The petitioner having taken such a specific stand cannot turn around and now dispute the signature to drag on the proceedings. The learned counsel submitted that the petitioner is only interested in dragging on the proceedings and therefore, there is no ground to interfere with the order passed by the Court below, dismissing the applications filed by the petitioner.

7. This Court has carefully considered the submissions made on either side and the materials available on record.

8. This Court does not find any illegality or infirmity in the order passed by the Court below and the Court below has given cogent reasons for dismissing the petition filed by the petitioner to send the cheque for expert opinion. This Court does not have any ground to interfere with the order passed by the Court below in Crl.M.P.No.2057 of 2019.

9. It is also seen from records that the petitioner had examined himself as DW.2 and cross examination was completed in the month of February 2019 and the case is now at the stage of final arguments. The petitioner wants to summon the Bank

Manager, HDFC Bank, T.Nagar, in order to mark the specimen signature, which is maintained in the Bank records. This Court is of the considered view that the petitioner can be given one opportunity to summon the Bank Manager.

10. The main reason for the delay in this case was due to transfer of the proceedings from one Court to another and it is seen from records that the examination of the witnesses itself has started only in the year 2018.

11. In view of the above, the order passed by the Court below in Crl.M.P.No.2058 of 2019 requires interference. The order passed by the Court below in Crl.M.P.No.2058 of 2019, dated 01.04.2019 is hereby set aside. The Court below is directed to issue summons to the Bank Manager, HDFC Bank, T.Nagar and fix a date for his examination. The examination and the Cross examination of the Bank Manager, shall be completed on the same day, when he appears before the Court. If for any reason, the Bank Manager is not examined on the date of his appearance, the petitioner shall forfeit his right to recall the Bank Manager at any future date.

12. In the result, Criminal Original Petition No.10277 of 2019 is allowed and the Court below is directed to complete the proceedings in C.C.No.643 2016, within a period of two months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1.The Metropolitan Magistrate,
Fast Track Court No.IV,
George Town,Chennai - I

2. The Public Prosecutor,
High Court of Madras.

+1cc to Mr.C.V.Kumar, Advocate, SR.No.61043
+1cc to Mr.P.Raja, Advocate, SR.No.61362

CRL.O.P No.10277 of 2019

Kak(16/09/2019)