

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2019

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

CrI.R.C.No.555 of 2019

and

CrI.MP.No.7561 of 2019

V.Jayakumar

... Petitioner/Accused

-Vs-

C.Murughanandham

.. Respondent/Complainant

Criminal Revision Petition filed under section 397 r/w 401 of the Code of Criminal Procedure to call for the records in S.T.C.No.13 of 2018 on the file of the Fast Track Court, Poonamallee and examine the correctness, legality or propriety of the findings in M.P.No.5308 of 2018 and allow this revision petition by referring the cheques to forensic lab for comparing the signature.

For Petitioner : Mr.K.P.C.Mogan

O R D E R

This Criminal Revision Petition has been filed to call for the records in S.T.C.No.13 of 2018 on the file of the Fast Track Court, Poonamallee and examine the correctness, legality or propriety of the findings in CrI.M.P.No.5308 of 2018 and allow this revision petition by referring the cheques to Forensic Lab for comparing the signature.

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

3. It is the case of the complainant that on 09.03.2017, the accused borrowed a sum of Rs.5,40,000/- and also executed a promissory note for the said amount. In order to discharge the above liability, the accused issued two cheques dated 27.07.2017 for a sum of Rs.4,00,000/- and dated 20.08.2017 for a sum of Rs.1,40,000/- to the complainant. When the complainant

presented the two cheques, they were dishonored on the ground of insufficient funds. The complainant issued a statutory notice dated 29.09.2017, for which, the accused issued a reply notice dated 14.10.2017, denying the liability. Therefore, the complainant initiated a prosecution in S.T.C.No.13 of 2018 before the Fast Track Court, Poonamallee under Section 138 of the Negotiable Instruments Act, against the accused. After Section 251 Cr.PC. formalities, the complainant filed a proof affidavit and he was cross-examined by the accused. In the cross-examination, the accused suggested to the complainant that for the loan transaction of the year 2013, the accused had given signed but blank cheques, which the complainant has misused. The complainant denied the suggestion. Thereafter, the accused filed a petition in CrI.MP.No.5308 of 2018 in STC.No.13 of 2018 under Section 45 of the Evidence Act to send the impugned cheques to the Forensic Science Department, Chennai, for comparing the hand writing in the cheques. The said petition has been dismissed by the trial Court by the impugned order dated 29.01.2019, challenging which, the accused is before this Court.

4. Heard the learned counsel for the accused, who submitted that the complainant had filled all the particulars and misused the cheques. He further submitted that, for discharging the burden under Section 139 of the Negotiable Instruments Act, an opportunity should be given to the accused to send the cheques for expert opinion.

5. This Court carefully perused the records and the impugned order.

6. The accused in Paragraph No.2 of his affidavit filed in support of CrI.MP.No.5308 of 2018 in S.T.C.No.13 of 2018, has stated that he had issued the impugned cheques, in which, he filled the complainant's name alone and had not filled the date and amount and that the complainant had misused it, whereas in the cross-examination of the complainant, the accused has suggested that he had given a signed, but blank cheques to the complainant. That apart, the accused has stated a story that the complainant had misplaced the documents while shifting the house and that he will return the documents relating to the loan transaction of the year 2013, however, he has misused the cheques.

7. In the opinion of this Court, when the accused has admitted that he has filled the name of the complainant in the cheques and had signed it, then it is indeed a futile exercise to send the cheques for expert opinion. All these factors have been taken into consideration by the trial Court while dismissing the petition. The accused filed CrI.MP.No.5308 of 2018, when the matter was posted for final arguments. Hence,

this Court does not find any infirmity in the order passed by the trial Court warranting interference. Accordingly, this Criminal Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mk

To

1.The Magisteral Level No.II,
Fast Track Court,
Poonamallee, Thiruvallur District.

2.The Public Prosecutor,
High Court, Madras.

CrI.R.C.No.555 of 2019

CA(CO)

RRS (09/07/2019)



WEB COPY