

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2019

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.OP.No.12526 of 2017

T.Sivaguru

...Petitioner

Vs.

N.Selvam

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to issue a direction to District Munsif cum Judicial Magistrate, Neyveli to send the reconstructed cheque and the contemporaneous records received in pursuant to the order dated 03.11.2011 made in C.P.No.7490 of 2010 passed by the Trial Court to forensic experts for comparison of the signatures and writings found in them complying with the order dated 21.12.2016 made in Crl.R.C.No.999 of 2016 on the filed of this Court before proceeding further in C.C.No.216 of 2006 pending on the file of the Court of District Munsif cum Judicial Magistrate, Neyveli.

For Petitioner : Mr.T.P.Prabakaran

For Respondent : Mr.A.Thiyagarajan

ORDER

This petition has been filed for a direction to the Court below to send the cheque and the contemporaneous records to forensic expert for comparison of the signature.

2. It is seen from the records that the petitioner is facing trial before the Court below for an offence under Section 138 of the Negotiable Instruments Act. This complaint was filed in the year 2006. During the pendency of the case, the petitioner filed an application for sending the cheque and the vakalat for expert opinion in order to ascertain the signature found in the cheque, which according to the petitioner is forged. This petition was dismissed by the Court below. As against the same the petitioner filed a criminal revision before this Court in Crl.RC.No.371 of 2011. This Court by an order dated 11.10.2012 dismissed the criminal revision petition on the ground that there is no requirement to send the cheque for expert opinion since the

petitioner himself has suggested in the cross-examination that he had signed in a blank cheque. This Court, therefore, found that the request made by the petitioner is unsustainable and directed the Court below to dispose of the case as expeditiously as possible.

3. Thereafter, the petitioner filed another petition before the Court below in CMP.No.200 of 2016, seeking for a very similar prayer. The said petition was dismissed by the Court below by an order dated 20.06.2016. The petitioner filed Crl.RC.No.999 of 2016 before this Court. This Court dismissed the criminal revision petition by an order dated 21.12.2016. It will be relevant to extract the portions of the order for better appreciation.

5. Learned counsel for petitioner submits that the order calling for contemporaneous documents was passed in C.M.P.No.7490 of 2010 on 03.01.2011. On the very next hearing dated viz., 21.01.2011 the cheque had gone missing. It had all along been the petitioner's case, he also having caused reply to the statutory notice, that the cheque had not been issued by him. The fact of the cheque going missing would go to show that a false case stands preferred against the petitioner. Learned counsel also informed paragraph 10 of the order under challenge could visit the petitioner with adverse consequence.

6. At first blush the contention of the learned counsel for petitioner seems attractive as the cheque having gone missing on the very next hearing date after a petition for comparison thereof with contemporaneous documents has been allowed raises suspicion. However, a reading of the complaint in the case informs that one of the documents filed therewith is the cheque in question. Therefore, there can be no difficulty in accepting the position that reconstruction has been effected there from. The reconstructed copy of the cheque is available and the particulars thereof are in keeping with the statutory notice initially issued in the case and therefore, there need not be doubt that reconstructed cheque is indeed a true copy of the cheque upon which the complaint has been preferred. Once such petition is arrived at, it follows that a comparison of the contemporaneous records produced before the Court below in keeping with its order in C.M.P.No.7490 of 2010 dated 03.11.2011 can well be effected with the cheque as reconstructed. Taking note of the apprehension of the learned counsel for the

petitioner, this Court would require the Court below to treat paragraph to of its order as restricted to the disposal of C.M.P.No.200 of 2016 and that the observations made therein shall have no bearing on the merits in the final analysis in the case.

7. With the above observation, criminal revision shall stand dismissed. Court below is directed to dispose of the case in C.C.No.216 of 2006 on its file expeditiously within a period of three months. Further taking into consideration, submission of learned counsel for petitioner that the petitioner is aged 68 years and suffers health complications, this Court directs the court below to dispense with the personal appearance of petitioner before it, upon his swearing to an affidavit informing his address for service, that he duly would be represented by his counsel on all hearing dates, that he would, at no instance, dispute his identity and that, he would appear before the court below as and when required. Upon the petitioner doing so, the Court below may seek the presence of petitioner before it, solely on the important hearing dates. Connected miscellaneous petitions are closed.

4. The petitioner has now moved the present petition before this Court to send the reconstructed cheque and the contemporaneous records to forensic expert to ascertain the signature found in the cheque. This petition was filed on the ground that there is such an indication found in the order passed by this Court in Crl.R.C.No.999 of 2016.

5. The learned counsel for the petitioner submitted that the petitioner has to establish his defence and has to 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 since the signature found in the cheque has been forged.

6. The learned counsel appearing for the respondent submitted that the petitioner has dragged on the proceedings for nearly 13 years by filing one petition after another and this is the 3rd round of litigation before this Court. The learned counsel submitted that every time this Court had directed the trial Court to conclude the proceedings as expeditiously as possible. However, the petitioner has managed to keep the proceedings pending and therefore the learned counsel submitted that the present petition is liable to be dismissed and the Court below has to directed to complete the proceedings within a time stipulated by this Court.

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

8. This is a classic case of abuse of process of Court. A complaint under Section 138 of the Negotiable Instruments Act, which is supposed to be completed within six months, has been successfully kept pending for the last thirteen years. The petitioner is coming before this Court for the 3rd time. The plea raised by the petitioner to send the cheque for comparison with a contemporaneous signature, is totally unsustainable, since a similar prayer that was sought for by the petitioner was already negated by this Court in Crl.R.C.No.371 of 2011, as early as on 11.10.2012. The subsequent orders passed in Crl.R.C.No.999 of 2016, certainly does not give a leverage to the petitioner to raise the very same plea and ask for reconstructed cheque to be sent for expert opinion. The petitioner is only trying to juggle with words and keep the proceedings pending without being ready to contest the case on merits.

9. This Court does not find any merits in this petition and this petition is liable to be dismissed.

10. In the result, this Criminal Original Petition is dismissed and the Court below is directed to complete the proceedings in C.C.No.216 of 2006 within a period of two months from the date of receipt of copy of this order. The Court below shall complete the proceedings within the time stipulated by this Court and a report shall be submitted before this Court after the completion of the proceedings.

Sd/-
Deputy Registrar (CJ Conf.,)

//True Copy//

ssr

Sub Assistant Registrar

To

The District Munsif cum Judicial Magistrate,
Neyveli.

+1 cc to M/s.A.Thiyagarajan, Advocate, S.R.No.67350

+1 cc to M/s.T.P.Prabakaran, Advocate, S.R.No.68024

CRL.OP.No.12526 of 2017

AD(CO)
SSM(12/09/2019)