



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2019

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.R.C.No.1148 of 2019 and
Crl.M.P.No.15442 of 2019

G.Arun Prasath

... Petitioner/Accused

Vs.

J.Gopinath

... Respondent/Complainant

PRAYER: The Criminal Revision Petition has been filed, under Section 397 read with 401 of Cr.P.C., seeking to call for the records and set aside the order dated 02.07.2019 made in Crl.M.P.No.80 of 2019 in C.C.No.44/2017, on the file of the learned Judicial Magistrate, Fast Track Court, Magisterial Level, Dharmapuri.

For Petitioner : Mr.C.Mariappan

For Respondent : No appearance

O R D E R

- 1.This Criminal Revision Petition has been filed, seeking to set aside the order dated 02.07.2019 passed in Crl.M.P.No.80 of 2019 in C.C.No.44/2017, by the learned Judicial Magistrate, Fast Track Court, Magisterial Level, Dharmapuri, dismissing the petition filed by the petitioner/accused, under Section 45(3) of Cr.P.C., and under Section 73 of the Indian Evidence Act, to send the cheque for expert opinion, to prove that the cheque was not filled by the petitioner/accused.
- 2.The brief facts of the prosecution case is that the petitioner is the accused, facing trial for the offence under Section 138 of the Negotiable Instruments Act, it is the contention of the petitioner, that he has not borrowed a sum of Rs.20,00,000/- from the complainant and that the cheque has not been issued to the respondent/complainant for Rs.20,00,000/-. It had been further contended that due to the relationship with the complainant, the petitioner/accused had borrowed a sum of Rs.4,00,000/- and that he had given two blank signed cheque and two blank pro-



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note, as security to the respondent/complainant. The further contention is that he had repaid the principle amount along with interest and that the respondent/complainant, in order to extract more money had not returned the cheque and that he had presented the cheque bearing number 685030, by filling Rs.20,00,000/- and thereafter filed the complaint.

- 3.The respondent/complainant had filed a counter, wherein it had been stated that the petitioner/accused had admitted the signature in the cheque and further during the cross examination on 20.03.2018, the respondent/complainant had deposed that the cheque had been filled and given by the petitioner/accused himself. Further, it had been contended that having admitted the signature in the cheque, the petitioner/accused cannot seek for sending the cheque for expert opinion and that the petition had been filed to drag the trial.
- 4.The Trial Court, finding that the petitioner/accused had admitted the signature in the cheque and that it was given towards security, had dismissed the petition to send it for expert opinion further, had granted liberty to the petitioner/accused, to adduce evidence to rebut the presumption under Section 139 of the Negotiable Instruments Act, at the relevant stage and had dismissed the petition, stating that the present petition filed under section 45(3) of the Indian Evidence Act is out of scope. As against the same, the present criminal revision petition has been filed.
- 5.This Court heard the learned counsel for the petitioner and carefully perused the materials placed on record.
- 6.The learned counsel for the petitioner would submit that though the petitioner had admitted the signature in the cheque, the entries in the cheque were not made by him and that in order to prove that the entries have not been made by him, the cheques have to be sent for expert opinion.
- 7.This Court carefully perused the records and the order of dismissal passed by the learned Trial Judge.
- 8.The Trial Court, finding that the petitioner had admitted the signature and in view of Section 20 of the Negotiable Instruments Act, had rejected the petition, stating that when the issuance of cheque and signature had been admitted it is not necessary to send the cheque for Expert Opinion. Further, the Court has found that the petition has been filed to delay the proceedings.
- 9.In 2019 (1) MWN (Cr.) DCC 164 in Bir Singh v. Mukesh Kumar, the Hon'ble Apex Court has held that:
"37.A meaningful reading of the provisions



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of the Negotiable Instruments Act including, in particular, Sections 20, 87 & 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 cheques had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheques may have been filled in by any person other than the drawer of the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Sections 138 would be attracted."

10.The Trial Court though having found that the present petition under Section 45(3) of the Indian Evidence Act is out of scope, the Trial Court has granted liberty to the petitioner to adduce evidence raising probable defence, to rebut the presumption under Section 139 of the negotiable Instruments Act, at the appropriate stage. Further, the Trial Court had rightly given liberty to the petitioner, the raise probable defence at the appropriate stage. I do not find any infirmity in the order passed by the Trial Judge.

11.Accordingly, the criminal revision is dismissed. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

ssi

To:

1.The Judicial Magistrate,
Fast Track Court at Magisterial Level,
Dharmapuri.

+1cc to Mr.C.Mariappan, Advocate SR.90346

Cr1.R.C.No.1148 of 2019

GMR(CO)
CB(23/01/2020)