



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 03.10.2019

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THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Crl.R.C. (MD) No.604 of 2019
and Crl.M.P. (MD)No.7544 of 2019

H.Maidhen Abu Subi

... Revision Petitioner/Petitioner/Accused

Vs.

M.Ismail Mydeen

...Respondent/Respondent/Complainant

PRAYER: Criminal Revision Case is filed under Sections 397 of the Criminal Procedure Code to call for the records in Crl.M.P.No.107 of 2019 in S.T.C.No. 33 of 2016 on the file of the Additional District Munsif, Tenkasi dated 27.03.2019 and set aside the same.

For Petitioner : Mr.S.Kumar
For Respondent : Mr.S.Sivakumar

O R D E R

This revision has been filed against the order passed by the Additional District Munsif, Tenkasi, in Crl.M.P.No.107 of 2019 in S.T.C.No. 33 of 2016 dismissing the petition filed under Section 45 of the Evidence Act. The revision petitioner is the accused and he was charged for the offence under Section 138 of the Negotiable Instruments Act. During the pendency of the private complaint, he has filed Cr.M.P.No.107 of 2019 in C.C.No.36 of 2016 before the trial court for referring the impugned cheque to the Forensic Department in order to obtain their opinion in regard to veracity of the signature. According to the petitioner/accused, unless the said opinion is obtained from the Forensic Department, the defence of the accused would be irreversibly affected and he would not be in a position to dispel the presumption in his favour under the provisions of the Negotiable Instruments At.

2. A counter statement was filed by the complainant objecting to the maintainability of the said petition. It is stated in the counter that already forensic opinion was sought in the year 2013 and finally, opinion was rendered only in the year 2019 after a period of 6 years and at the instance of the accused the proceedings were successfully protracted and this was a second application and



therefore the intention of the accused was only to protract the proceedings and the application lack bonafides.

3. Considering the circumstances of the case and also considering the legitimate objection placed on behalf of the complainant, the trial court dismissed the petition filed under Section 45 of the Evidence Act, against which, this revision petition has been filed before this Court.

4. The learned counsel for the petitioner would submit that unless forensic opinion is obtained in order to ascertain the veracity of the signature affixed on the cheque, the defence of the accused would be gravely affected and his entire case would be prejudiced.

5. This Court perused the order passed by the trial court.

6. A perusal fo the order passed by the trial court reveals that the trial court has concluded against the petitioner herein stating that already the cheque was referred for forensic expert's opinion earlier and already 6 years have elapsed. However, dissatisfied with the said reference, once again similar application has been filed for referring the signature before the Forensic Department which could only be termed as an attempt to protract the proceedings and avoid payment under the cheque given to the complainant.

7. In fact, the trial court has also held that the Assistant Director of Forensic Department was also examined and therefore, there was no necessity to refer the matter once again for obtaining forensic expert's opinion. According to the trial court, when originally reference was made, the accused ought to have included all the objections at the first instance itself and the present attempt was made by the accused only to fill up the lacuna on the basis of the evidence rendered by the Forensic Department, which is not permissible in law. According to the trial court, the application has been filed without framing issues and also lacks bonafides and accordingly, dismissed the same.

8. This Court find nothing wrong in the order passed by the trial court. The attempt made by the petitioner herein to send the signature to the Forensic Department at this stage when the complaint was pending for several years is clear abuse of process of court and the trial court has rightly applied its mind and dismissed the same.

9. Thereafter, the petitioner/accused has chosen to file the present revision petition. This Court is unable to appreciate as to how such revision petition could be maintained in the first place. This Court finds that the petitioner/accused is resorting to



the trial court in order to frustrate the complainant from having the trial completed at an earlier date. Such attempts on the part of the accused should not be encouraged by this Court.

10. In view of the same this Court does not find any infirmity in the approach of the trial court and therefore this Court is of the opinion that the revision petition is completely without any basis, merit or substance and the same lacks bonafides and hence, the same is dismissed. Although this Court initially wanted to impose costs but at the request of the learned counsel for the petitioner restrains from imposing costs while dismissing the revision petition. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (C.O)

// True Copy //

Sub Assistant Registrar(CS)

CM

To

The Additional District Munsif, Tenkasi.

+1 CC to M/s.S.SIVA KUMAR, Advocate SR-91429.

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