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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P.(MD).No.16337 of 2017

and

Crl.M.P.(MD) No.10826 of 2017

K.S.Murugan

... Petitioner/Petitioner/Accused

Vs.

M.Vadivel

... Respondent/ Respondent/ Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C. to set aside the impugned order dated 09.12.2016 made in Cr.M.P.No.5501 of 2016 on the file of Judicial Magistrate, Srivaikundrum and allow the petition.

For Petitioner : Mr.C.Padmaraj

O R D E R

This Criminal Original Petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioner under Section 91 of Cr.P.C to call for the sample signature from the Bank and to send the cheque along with the sample signature for expert opinion.

2. The petitioner is facing trial before the Court below for offence under Section 138 of the Negotiable Instruments Act. The complaint was filed in the year 2013 and the case was at the stage of defense evidence. At that point of time, the petitioner filed an application under Section 91 of Cr.P.C. to call for the sample signature from the Bank, on the ground that the signature found in the cheque is not the signature of the petitioner.

3. The Court below had dismissed the above said application on the ground that the petitioner never took such a stand either in the reply notice or for three years when the complaint was pending at the stage of trial. Therefore, the Court below found that the present application has been filed only to drag on the case.

4. The learned counsel for the petitioner submitted that the petitioner has put sufficient questions to the respondent during cross examination in order to elicit the fact that the signature found in the cheque is not the signature of the petitioner. The learned counsel submitted that only if the sample signature is summoned from the Bank, the same can be compared with the signature found in the cheque by sending it for an expert opinion.



5. The learned counsel concluded his arguments by submitting that the burden is cast upon the petitioner, under Section 139 of Negotiable Instruments Act and the same has to be rebutted and one final opportunity can be given.

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6. This Court has carefully considered the submissions made by the learned counsel for the petitioner and also the materials available on record.

7. As rightly found by the Court below, the petitioner never took the stand that the signature found in the cheque has been forged at the earliest point of time. It is seen from the records that the petitioner has received the statutory notice issued by the respondent and the acknowledgment card has been marked as Exh-7. No reply was given by taking a stand that the signature found in the cheque is forged. That apart, the complaint was pending for nearly three years and at no point of time, the petitioner took any steps to call for the sample signature and send it for expert opinion. This defense has all of a sudden dawned upon the petitioner and as rightly held by the Court below, it is only with a view to drag on the proceedings. If the petitioner was clear about his stand and was convinced that the signature found in the cheque is forged, he should have taken steps at the earliest point of time and he cannot be permitted to wait for nearly three years and thereafter, take such a stand.

8. This Court does not find any illegality or infirmity in the order passed by the Court below and also finds that there is no ground to interfere with the order passed by the Court below.

9. In the result, the Court below is directed to complete the proceedings in S.T.C.No.1455 of 2013, within a period of three(03) months from the date of receipt of a copy of this order. Accordingly, this Criminal Original Petition is disposed of. Consequently, connected Crl.M.P.(MD) No.10826 of 2017 is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Judicial Magistrate,
Srivaikundrum



2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order made in
Crl.O.P. (MD) .No.16337 of 2017
Dated:18.09.2019

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