



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P. (MD) .No.17441 of 2017

and

Crl.M.P. (MD) No.11447 of 2017

P.Pattabiraman

... Petitioner/ Revision Petitioner
Petitioner/ Accused

Vs.

S.R.Eswar

... Respondent/ Respondent/
Respondent/ Complainant

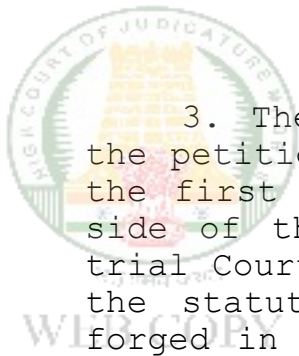
PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C. to set aside the order passed by the learned Principal Sessions Judge, Dindigul in Crl.R.C.No.5 of 2017 dated 18.07.2017 in confirming the order passed by the learned Judicial Magistrate No.3 Dindigul in Cr.M.P.No.50 of 2017 in C.C.No.1 of 2014 dated 03.01.2017.

For Petitioner : Mr.D.Selvaraj
For Respondent : Mr.G.Gomathisankar

O R D E R

This Criminal Original Petition has been filed challenging the order passed by the Court below dismissing the revision petition filed by the petitioner, challenging the order passed by the learned Judicial Magistrate-III, Dindigul dismissing the application filed by the petitioner under Section 45 of the Evidence Act.

2. The respondent has initiated proceedings against the petitioner for offence under Section 138 of the Negotiable Instruments Act. The complaint was taken on file in the year 2014. The respondent had examined himself as P.W.1 and the Bank Manager was examined as P.W.2 and after questioning under Section 313 Cr.P.C, the case was at the stage of defence evidence. At that point of time, the petitioner had chosen to file a petition to send the cheque for an expert opinion on the ground that, the signature found in the cheque is forged.



3. The trial Court dismissed the petition on the ground that the petitioner never took this defence at any point of time and for the first time, when he was called upon to adduce evidence on the side of the defence, the present petition came to be filed. The trial Court also found that the petitioner did not give a reply for the statutory notice to the effect that his signature has been forged in the cheque. That apart, the trial Court also found that the petitioner has not even cross examined both the witnesses on the side of the complainant. Therefore, the trial Court came to a categoric finding that the petition itself has been filed to drag on the proceedings.

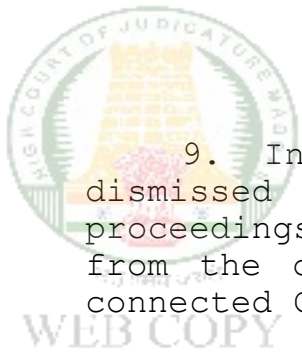
4. The learned counsel for the petitioner submitted that an opportunity may be given to the petitioner to establish his defence, since the signature found in the cheque is forged. The learned counsel further submitted that the burden is cast upon the petitioner under Section 139 of the Negotiable Instruments Act and the same cannot be shifted without sending the cheque for expert opinion and consequently the petitioner cannot establish his defense.

5. Per contra, the learned counsel appearing on behalf of the respondent submitted that the revision petition filed by the petitioner is not maintainable and on that ground alone, this Criminal Original Petition has to be dismissed. The learned counsel further submitted that the petitioner did not cross examine any of the witnesses, who were cross examined on the side of the complainant. That apart, the petitioner never took this defence at any point of time and towards the end of the proceedings, for the first time, this defence was taken only with a view to drag on the proceedings. The learned counsel further submitted that the petitioner has not appeared before the Court below and there is a Non Bailable Warrant(NBW) pending against the petitioner.

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

7. As rightly held by the trial Court, the petitioner never chose to take this defence at the earliest point of time. The petitioner never questioned the signature found in the cheque even in the reply notice. The petitioner did not cross examine P.W.1 and P.W.2. Therefore, it is clear that the petitioner only wants to drag on the proceedings by sending the cheque for expert opinion.

8. This Court does not find any illegality or perversity in the order passed by the Court below and there is absolutely no ground to interfere with the same. That apart, the criminal revision is not maintainable as against the order passed by the Court below under Section 45 of the Evidence Act.



9. In the result, this Criminal Original Petition stands dismissed and the Court below is directed to complete the proceedings in C.C.No.1 of 2014 within a period of two(02) months from the date of receipt of a copy of this order. Consequently, connected Crl.M.P. (MD) No.11447 of 2017 is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

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To

- 1) The Principal Sessions Judge,
Dindigul.
- 2) The Judicial Magistrate No.3
Dindigul.

+1 CC to Mr.G.GOMATHISANKAR, Advocate SR-89463.

Order made in
Crl.O.P. (MD) .No.17441 of 2017

Dated:
25.09.2019

CS(18.10.2019) 3P 4C