

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

CRIMINAL REVISION CASE NO.82 OF 2020

&

CRL.M.P.NO.474 OF 2020

K.Manikkam

.. Petitioner/Accused

- Vs -

R.Murugesan

.. Respondent/Complainant

Prayer:

Petition filed under Section 397 r/w 401 of the Criminal Procedure Code to set-aside the order dated 10.12.2019 passed in CMP No.3099 of 2019 in C.C.No.79 of 2016 on the file of the learned Judicial Magistrate No.2, Namakkal.

For Petitioner : Mr.R.K.Gandhi

O R D E R

The petitioner, who is facing trial for the offence under section 138 of the Negotiable Instruments Act, in C.C.No.79 of 2016 on the file of the learned Judicial Magistrate No.2, Namakkal, filed C.M.P.No.3099 of 2019 under section 45 of the Indian Evidence Act seeking a direction to send the cheque in question (Ex.P-1) to the opinion of the hand writing expert, by raising a ground that the complainant is unknown to the petitioner, who has not given any cheque to the complainant, whereas the stand of the complainant is that the petitioner has given cheque in his house and the wordings in the cheque were written by the petitioner himself. The said statement was also stated by the complainant during his examination before the Court below.

2. Claiming that the respondent/complainant has stated that the wordings in the cheque were written by the petitioner and that the complainant has given consent and no objection, in his cross-examination, to send Ex.P-1-cheque for the handwriting expert, the petition came to be filed before the Court below. After contest, the said petition was dismissed by an order dated 10.12.2007. Aggrieved over the same, the petitioner is before this Court.

3. Heard the learned counsel appearing for the petitioner.

4. The learned counsel for the petitioner submitted that the petitioner in his statement has stated that the complainant is unknown to him and not issued any cheque and as such, the dismissal of the petition by the Court below is liable to be set-aside; and that the learned Magistrate failed to consider that there is no evidence on record to show that the complainant has given any amount to the petitioner for which the petitioner has given cheque.

5. This Court is of the opinion that the grounds raised by the petitioner are baseless, since the Court below has recorded cogent and sufficient reasons while dismissing the petition. Further, the petition to send the Ex.P-1-cheque for the opinion of the hand writing expert has been filed by the petitioner with a motive to delay the trial before the court and the petitioner/accused can let in sufficient cogent evidence to prove that the cheque was not issued by him at all. Even assuming that the cheque was not given by the petitioner, then the remedy for the petitioner/accused is to establish the same before the Court below, by adducing proper evidence.

6. A perusal of the materials available on record would disclose that the case under Section 138 of the said Act was taken on file by the learned Magistrate on 31.05.2016. The complainant was examined on 10.07.2017. Though the petitioner was given time till 05.06.2018 to cross-examine the complainant, he was not cross-examined and hence the Court below has passed a conditional order on 19.06.2018 to cross-examine the complainant. Then only, on 12.07.2018, the cross-examination has been completed on D.W.1. by the petitioner.

7. From the above fact it is clear that the petitioner is indulging in dilatory tactics to drag on the proceedings. The reasonings rendered by the court below in dismissing the petition filed by the petitioner/accused do not suffer from any infirmity.

8. For the aforesaid reasons, the above Criminal Revision Case fails and accordingly, the same is dismissed. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

srk

To

1. The Judicial Magistrate No.2,
Namakkal.

+1cc to Mr.R.K.Gandhi, Advocate, S.R.No.12966

Criminal Revision Case No.82 of 2020
& Crl.M.P.No.474 of 2020

NRJK (CO)
CS/22/05/2020



WEB COPY