

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2020

CORAM :

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl. R.C.No.26 of 2018
and
Crl MP.Nos.127 and 128 of 2018

Uma Shankar

...Petitioner

.Vs.

M/s Hi-Tech Air Power(P) Ltd.,
Represented by its Sales Manager,
D.Mahendra Kumar,
No.27 Second Floor,
Second Main Road,
Thilai Nagar,
Senthil Nagar,
Kolathur, Chennai-99

...Respondent

Prayer: The Criminal Revision petition is filed under Section 397 and 401 of Cr.P.C to set aside the order made in M.P.No.4074 of 2017 in C.C.No.8420 of 2014 dated 22.12.2017 on the file of the FTC-II, Metropolitan Magistrate Court, Egmore, at Allikulam, Chennai-3 and pass orders.

For Petitioner : M/s M. Sivavarthnam
For Respondents : Mr. R.Ramesh Kumar

ORDER

The Revision petition is directed against the order passed by the Fast Track Court -II, Metropolitan Magistrate, Egmore at Allikulam, Chennai-3 in M.P.No.4074 of 2017 in C.C.No.8420 of 2014 dated 22.12.2017.

2. It is seen from the contentions made in the petition filed under Section 45 of Indian Evidence Act r/w Section 91 of Cr.P.C, the petitioner stated that the cheque concerned in this case was not at all signed by him and the cheque is a fabricated

one. Therefore, it is necessary to send the cheque to obtain the opinion of the handwriting expert after comparing with the admitted signatures of the petitioner with the contemporaneous documents which had been filed in the Court in the form of Xerox copy of sale deed dated 03.11.2006 (document No.6335 of 2006) and sale deed dated 14.03.2007 (1150 of 2007). Petitioner also stated that he had earlier filed a petition seeking a similar relief and that was returned by the Court stating that "specimen signature are not available with the Court". Therefore, he was forced to file this present petition.

3. It is also the case of the petitioner that he filed a quash petition in Crl.O.P.No.3093 of 2017 for quashing the proceeding in C.C.No.8420 of 2014 on the file of the Fast Track Court-II, Metropolitan Magistrate Court, Egmore, Chennai. It is alleged by the learned counsel for the petitioner that in Para "C" of the quash petition it was specifically stated that to honour the business transaction the petitioner gave un-filled cheque bearing Registration No.480783 drawn on the State Bank of India, Tirupur Main Branch as security to the respondent company before 5 years, petitioner reiterates that the signature in the cheque is not that of him and therefore, it has to be necessarily subjected to examination by the Handwriting expert to render substantial justice to the parties.

4. Per contra the learned counsel for the respondent submits that the claim of the petitioner that the signature found in the cheque is not that of the petitioner has not been taken at the first available opportunity. The petitioner had taken this defence only after the petitioner was questioned under section 313 of Cr.P.C. Though the respondent was cross examined at length, no specific question was put to the respondent denying the signature of the petitioner in the cheque.

5. It is also brought to my notice that even during the examination under Section 313 of Cr.P.C, the petitioner has not specifically denied his signature in the cheques. It is submitted that the quash petition filed in Crl.O.P.No.3093 of 2017 is a different petition and that petition was filed as an after thought and the claim made in that petition with regard to the denial of signature in the cheque does not merit consideration by this Court. Therefore, the learned counsel for the respondent prays for the dismissal of this revision petition.

6. Considered the submissions of the learned counsel for the petitioner and the learned counsel for the respondent and perused the records.

7. It is seen from the 313 questioning that the legal notice/Ex.P5 sent by the respondent was received by the petitioner on 23.11.2013 and the receipt of the legal notice was accepted by the petitioner. Obviously the petitioner has not chosen to give reply to the legal notice and denied that the signature found in the cheque is not that of him, at the first available opportunity. As rightly pointed out by the learned counsel for the petitioner, though it is put to the respondent during the course of cross examination that the signature available in the cheque and other details were written in different ink, again it was not specifically put to the respondent that the signature in the cheque was not that of the petitioner. Most importantly when the petitioner was examined under Section 313 of Cr.P.C he has not specifically denied that the signature found in the cheque is not that of him. Even with regard to the business transactions he stated that he had to verify the records with regard to the purchase order and invoice. He can say whether he has to pay a sum of Rs.13,58,700/- to the respondent only after verifying the accounts.

8. With regard to the cheque his answer was that he has to verify accounts whether he has given the cheque for a sum of Rs.13,58,700/- when he was asked as to whether he wants to say anything with regard to this case, his answer was that it is a false case; he gave the cheque in question as a security and the respondent misused the cheque. Here again the petitioner has not specifically denied that the signature available in the cheque is not that of him. The business transaction and the issuance of cheque were not denied by the petitioner when he was questioned U/S 313 of Cr.P.C. Even in CrI.O.P.No.7093 of 2017, the petitioner has only stated that he gave un-filled cheque and not unsigned cheque.

9. Therefore, it is clear as crystal that the petition filed for sending the cheque for handwriting expert in M.P.No.4074 of 2017 in C.C.No.8420 of 2014 was filed only to procrastinate the proceedings. This Court find no merits in the submissions made by the learned counsel for the petitioner that sending the cheque to expert's opinion will not cause prejudice to the respondent is not a valid ground. By filing this petition 2 years had been wasted and the case is still pending.

10. This Court finds that this petition has absolutely no merit and deserves to be dismissed. In this view of the matter, this Court finds that there is no reason to interfere with the

order passed by the learned Metropolitan Magistrate Court, Egmore, at Allikulam, Chennai-3 in M.P.No.4074 of 2014 in C.C.No.8420 of 2014 dated 22.12.2017 and the order is confirmed and this Criminal Revision petition is dismissed accordingly. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

smn

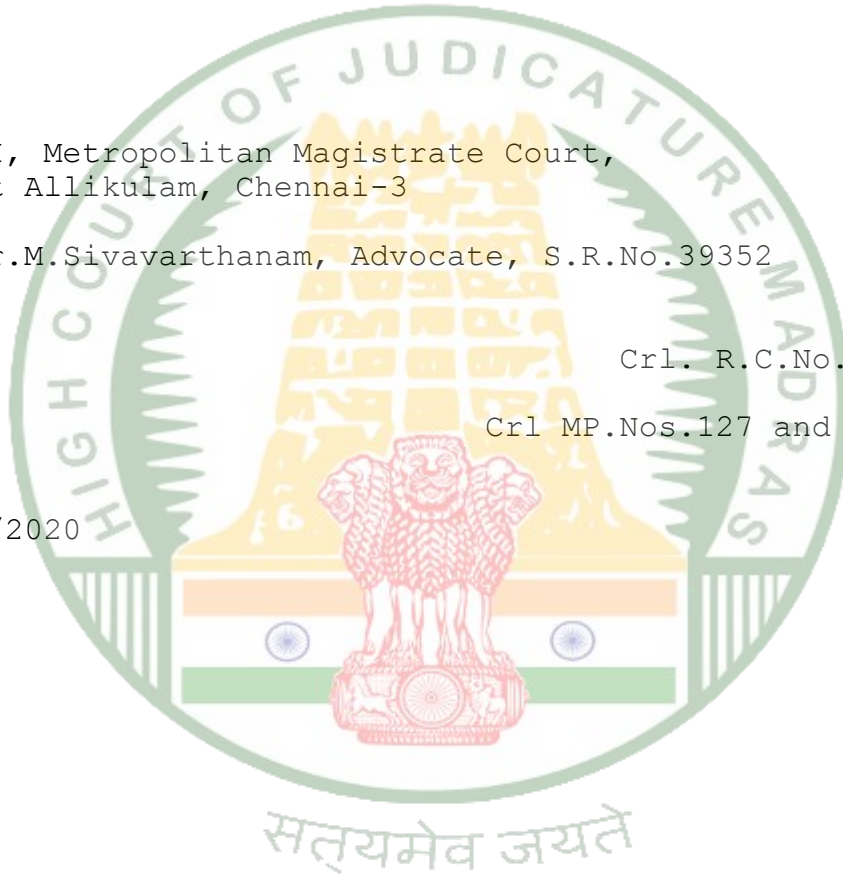
To

The FTC-II, Metropolitan Magistrate Court,
Egmore, at Allikulam, Chennai-3

+1cc to Mr.M.Sivavarthanam, Advocate, S.R.No.39352

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and
Crl MP.Nos.127 and 128 of 2018

SSI(CO)
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