

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.O.P.No.5507 of 2019
and
Crl.M.P.Nos.3145 and 3146 of 2019

Krishnan
S/o.Arujunan

... Petitioner

versus

1.Sellammal,
W/o.Senkodaiyan

2.Kanakam,
S/o.Murthi

3.Krishnamurthi,
S/o.Senkodaiyan

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, seeking to set aside the order dated 04.02.2019 in C.M.P.No.4308 of 2018 in C.C.No.46 of 2017 on the file of the Judicial Magistrate, Fast Track Court, Kallakuruchi.

For Petitioner : Mr.K.Sudhakar

For Respondents : Mr.R.Vivekananthan

O R D E R

This Criminal Original Petition has been filed praying to set aside the order dated 04.02.2019 in C.M.P.No.4308 of 2018 in C.C.No.46 of 2017 on the file of the learned Judicial Magistrate, Fast Track Court, Kallakurichi.

2. The case of the petitioner is that he is an accused in C.C.No.46 of 2017 pending on the file of the learned Judicial Magistrate, Fast Track Court, Kallakurichi. The deceased / first respondent had filed the above said case against this petitioner under Section 138 of N.I. Act alleging that the petitioner

herein has issued a cheque for discharging legally enforceable debt, which has been returned as "funds insufficient".

3. Further case of the petitioner is that during the course of trial proceedings, when at the time the case was posted for cross examination of the deceased, who has been examined as P.W.1, the petitioner herein filed a Petition under Section 45 of the Evidence Act praying to identify the age of the ink, which was found in the returned cheque. The learned Magistrate, after elaborate enquiry had dismissed the said petition by mentioning two grounds. Aggrieved over the same, the petitioner is before this Court with the present Criminal Original Petition.

4. The learned counsel for the petitioner would submit that while at the time of passing orders in the above referred petition, the learned Magistrate has held as for the statutory notice issued by the respondent, the first petitioner herein did not sent any reply by denying the averments found in the said notice as well as the cheque has not been signed at the time as alleged by the respondent.

5. In this regard, he would further submit that immediately after receipt of the statutory notice issued by the respondent, on 02.11.2016 itself, the petitioner herein sent a reply notice and therefore, the conclusion arrived at by the trial Judge is factually found incorrect, further, in order to substantiate the same, he had produced the reply notice dated 02.11.2016 sent by the petitioner in which, it was averred as the cheque has not been issued by the petitioner as alleged by the respondent.

6. Therefore, the first and foremost submission in respect to the sending of reply notice is found correct and therefore, the learned Judicial Magistrate committed an error by saying that there was no reply notice sent by the petitioner immediately after receipt of the statutory notice.

7. The learned Judicial Magistrate, apart from the above referred reason concluded his findings by referring the case of R.Nethaji vs. A.S.Ganesan dated 04.06.2015 in which it was observed as "in Tamil Nadu, there is no technology available for calculating the age of the ink, which was used for putting the signature". In this regard, the learned counsel for the petitioner himself admitted that there was no technology available to calculate the age of the ink. In otherwise, before the trial Court, the petitioner herein filed a petition praying to send for the cheque dated 17.10.2016 pertaining to this case for finding out age of the ink, which has been used by the petitioner for putting his signature.

8. All are aware, as observed by the learned Judicial Magistrate, no technology is available in Tamil Nadu to identify the age of the ink and therefore, in respect to the said conclusion, I am of the considered opinion that the said finding arrived at by the learned Judicial Magistrate, is found correct. In otherwise, no other circumstances were indicated by the petitioner for interfering with the findings by the learned Judicial Magistrate.

9. Therefore, the Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sri

To
The Judicial Magistrate,
(Fast Track Court)
Kallakurichi.

CrI.O.P.No.5507 of 2019 and
CrI.M.P.Nos.3145 and 3146 of 2019

PA(CO)
RMP(06/11/2020)

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