

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2020

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

Crl.O.P.No.20096 of 2020

and

Crl.M.P.No.8340 of 2020

Rajkumar,
S/o, Rathinam,
D.No.B-51, B-Block,
Tamil Nadu Housing Board,
Trichy Road,
Namakkal Town,
Namakkal Taluk & District.Petitioner

-Vs-

Karthik,
S/o, Palaniappan,
Mavureddy,
Paramathy Villag & Post,
Paramathy-Vellore Taluk,
Namakkal District. Respondent

Prayer:Criminal Original Petition filed under section 482 of Criminal Procedure Code, to set aside the order dated 27.11.2020 passed in C.R.P.No.9 of 2020 (on the file of the Additional District and Sessions Judge, Namakkal) in S.T.C.No.255 of 2017 (on the file of the Judicial Magistrate, Paramathy).

For Petitioner : Mr.C.S.Saravanan

O R D E R

Assailing the order dated 27.11.2020 passed in C.R.P.No.9/2020 on the file of the Additional District and Sessions Judge, Namakkal in S.T.C No.255 of 2017 on the file of the Judicial Magistrate Court, Paramathi, the Criminal Original Petition has been laid by the petitioner/accused.

2. The Petitioner/Accused is facing prosecution at the hands of the respondent under section 138 of the Negotiable Instruments Act in S.T.C.No.255 of 2017 on the file of the Judicial Magistrate Court, Paramathi. The C.M.P.No.2810 of 2019 has been preferred by the petitioner/accused putting forth the case that during the cross examination, the respondent / complainant examined as P.W.1 has categorically admitted that

he has no objection/issue in procuring the expert opinion to prove that the signature found in Ex.P1 is not that of the petitioner /accused and hence according to the petitioner/accused, it is very much necessary to send the admitted signatures of the petitioner/accused found in the documents executed by the petitioner before his banker and also the disputed signatures found in the cheque involved in S.T.C.No.255 of 2017 to the handwriting expert for offering opinion and if the same is done, the petitioner would be able to establish the defence and hence the petition.

3. The respondent/complainant resisted the abovesaid case of the petitioner contending that the petition has been belatedly filed by the petitioner with the sole object of delaying the trial proceedings and the petitioner has misinterpreted the evidence of the bank manager who had adduced evidence in the matter and further putforth that merely because, the respondent during the course of cross examination had expressed that he has no objection to send the disputed signature for comparison that by itself would not cloth any unfettered right on the part of the petitioner/accused, to prefer the present petition and therefore, according to the respondent/complainant, the petition preferred by the petitioner is totally devoid of merits and liable to be dismissed.

4. On a perusal of the rival contentions putforth by the respective parties and the material records, the Judicial Magistrate, Paramathi vide order dated 12.03.2020 has dismissed the abovesaid petition preferred by the accused. Aggrieved over the same, the petitioner has preferred the C.R.P.No.9/2020 on the file of the Additional District and Sessions Court, Namakkal. The Additional District and Sessions Judge, Namakkal, on an appreciation of the case putforth before him by the respective parties, was pleased to confirm the order passed by the Judicial Magistrate, Paramathi and resultantly dismissed the C.R.P vide order dated 27.11.2020. Impugning the same, the present Criminal Original Petition has been laid by the petitioner.

5. The records put along with the Criminal Original Petition are perused. The argument of the petitioner's counsel heard. It is noted that the petitioner/accused is facing criminal prosecution under section 138 of Negotiable Instruments Act. It is further noted that the respondent/complainant had issued the statutory notice and to the same, a reply notice had been sent by the petitioner/accused on 24.01.2017. In the reply notice, as rightly held by the Courts below, the petitioner/accused has not disputed the signature found in the cheque involved in the matter. This fact has been correctly appreciated by the Courts below and thereby the Courts below had correctly held that the present petition preferred by the petitioner for sending the disputed cheque in question for

comparison by the handwriting expert is only with the aim of delaying the proceedings endlessly. That apart, the trial of the case has been pending for more than two years after the institution of the complaint. Despite the abovesaid fact, the petitioner/accused has not evinced interest to send the disputed cheque in question for comparison with his admitted signature to an expert at the earliest as contemplated under law. This fact would also go to expose that the abovesaid endeavor made by the petitioner/accused to have the disputed cheque examined by an expert is only an after thought and with the sole object of delaying the proceedings, one way or the other, and, if entertained, would cause immense hardship to the respondent/complainant. In addition to that it is also noted that the cheque in question marked as Ex.P1 has not been dishonoured by the bank, on the footing that the signature found in the cheque differs from the specimen signature of the petitioner/accused available with the bank. All these facts have been rightly appreciated and considered by the Courts below and resultantly held that the present petition has been laid by the petitioner/accused only with the sole aim of delaying the proceedings endlessly and in such view of the matter, the Courts below are found to have dismissed the petition preferred by the petitioner/accused on valid and tenable grounds and no interference is called with reference to the same.

6. In the light of the abovesaid factors, I do not find any error or infirmity found in the impugned order passed by the Courts below. Resultantly, the Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Mfa

To

1.The Additional District and Sessions Judge,
Namakkal.

2.The Judicial Magistrate, Paramathy.

CrI.O.P.No.20096 of 2020
and
CrI.M.P.No.8340 of 2020

NRL (CO)
GN (07/01/2021)