



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.01.2019

PRONOUNCED ON : 11.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.R.C. (MD) .No.1 of 2019

and

CrI.M.P. (MD) .No.25 of 2019

S.Kamalarasi

... Petitioner/Accused

-Vs-.

M.Gunasekaran

... Respondent/Complainant

Prayer: Criminal Revision Case filed under Section 397 r/w Section 401 Cr.P.C to call for the records and set aside the order dated 09.11.2018 in CrI.M.P.No.10205 of 2018 in S.T.C.No.586 of 2012 on the file of the learned Fast Track Court of Magistrate Level, Karur.

For Petitioner

:Mr.N.Anantha Padmanabhan

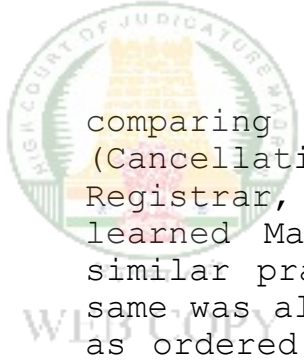
For Respondent

:Mr.K.Suresh

ORDER

This Criminal Revision Case is directed against the order dated 09.11.2018 passed in CrI.M.P.No.10205 of 2018 in S.T.C.No.586 of 2012 by the learned Fast Track Court of Magistrate Level, Karur.

2.Originally, the respondent filed a private complaint under Section 200 Cr.P.C for the offence punishable under Section 138 of the Negotiable Instruments Act before the learned Judicial Magistrate No.II, Karur. The said complaint was taken on file in C.C.No.115/2009. Subsequently, the case was transferred to the Judicial Magistrate/Fast Track Court, Karur and taken on file in STC.No.586/2012. During the pendency of the case in STC.No.586/2012, the petitioner herein filed a petition in C.M.P.No.3111/2013 under Section 45 of the Indian Evidence Act to send for the disputed cheque to compare with the signature found in the bank account opening form and the said petition was allowed. Subsequently, the petitioner has not taken any steps to send the document to Forensic Laboratory for comparison. Subsequently, after some time, the petitioner has filed another petition for similar relief in C.M.P.No.9525/2016 for sending the disputed cheque for



comparing with the signature found in document No.58/2008 (Cancellation of General Power of Attorney) on the file of the Sub-Registrar, Manapparai. The said petition was dismissed by the learned Magistrate on 09.11.2018 on the ground that already for similar prayer, the petitioner filed C.M.P.No.3111 of 2013 and the same was allowed and he has not taken any steps to send the document as ordered by the Magistrate for comparison. Challenging the said order, the petitioner filed Crl.R.C.No.21 of 2018. This Court also dismissed the petition on 12.04.2018. Subsequently, he filed another application for the similar prayer in C.M.P.No.3438/2018. The said petition was also dismissed by the learned Magistrate. Subsequently, the learned Trial Court has also passed the final judgment in the said STC after full-fledged trial. Challenging the said order, the petitioner filed a criminal appeal before the learned Principal Sessions Judge, Karur in C.A.No.61/2018. In the said appeal, the learned Principal Sessions Judge, Karur, set aside the judgment of the trial court and remanded the case to the trial court, after giving opportunity for cross-examination and dispose the matter in accordance with law. Based on the order passed by the learned Sessions Judge, the case was remitted back to the Magistrate for compliance and during that time, several adjournments were granted. But, in stead of cross-examining the witness, the petitioner filed the another application in C.M.P.No.10205 of 2018 in S.T.C.No.586/2012 on the file of the Judicial Magistrate/Fast Track Court, Karur, for the very same relief under Section 45 of the Indian Evidence Act. The learned Magistrate, also after giving opportunity to the petitioner, dismissed the said petition, discussing the entire facts elaborately. Now, challenging the said dismissal order, the petitioner once again, approached this Court, by filing the present revision before this Court.

3.The learned counsel appearing for the revision petitioner would submit that the petitioner never borrowed any amount from the respondent and executed the disputed cheque. Disputing the signature found in the disputed cheque, he filed petitions to send the disputed cheque to the Forensic expert for comparing with the signature found in the Bank Account Opening form and also the Cancellation of the Registered Power of Attorney. If both the documents are compared with the disputed signature, it will reveal the truth that the signature found in the disputed cheque is not that of the petitioner. He further submitted that the signature of the petitioner has been forged by the respondent.

4.The learned counsel appearing for the respondent would submit that the petitioner has already filed similar petition even in the year 2013 itself in C.M.P.No.3111/2013. The trial court also allowed the petition. But the petitioner did not take any steps to send those documents for getting expert opinion. Subsequently, he filed a revision before this Court. The said revision was dismissed by this Court. Thereafter, he has not challenged the said order passed by this Court. In the mean while, the trial court, after

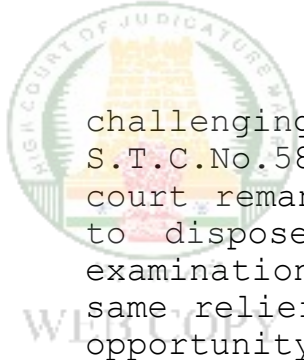


completion of trial, pronounced the judgment in S.T.C.No.586/2012. Challenging the said order, the petitioner also filed an appeal before the Sessions Judge. The Sessions Judge remanded the matter to the trial court to dispose the matter, after giving opportunity to cross-examine the witnesses. But, in stead of cross-examining, the petitioner filed another petition for the very same relief. Therefore, the Magistrate once again dismissed the petition, against which, the present criminal revision case has been filed. Hence, it is not maintainable.

5.Heard both sides and perused the records carefully.

6.Admittedly, the respondent filed a private complaint under Section 200 Cr.P.C against the petitioner/accused for the offence punishable under Section 138 of the Negotiable Instruments Act before the learned Judicial Magistrate, Karur. Subsequently, the same was transferred to the Fast Track Court (Magistrate Level), Karur and during pendency of the trial, the petitioner filed C.M.P.No.3111/2013 for comparison of his signature found in the disputed cheque with the admitted signature found in the Account Opening Form maintained by the Bank. Though it was allowed, the petitioner has not taken steps to send his document for comparison and getting expert opinion under Section 45 of the Indian Evidence Act. Subsequently, when the trial was proceeded and about to complete, the petitioner once again filed C.M.P.No.9525/2016 for the very same relief and also sought to compare the signature found in the disputed cheque with the one registered cancellation of power of attorney in Document No.58/2008 on the file of the Office of the Sub-Registrar, Manapparai. The said petition was dismissed on 09.11.2018. Challenging the same, the petitioner filed a revision in Crl.R.C.No.21/2018. This Court also after considering the entire facts dismissed the same on 12.04.2018. Challenging the same, the petitioner herein filed C.A.No.61 of 2018. In the said appeal, the learned Principal Sessions Court, Karur, set aside the judgment of the trial court and remanded the case to the trial court for disposing of the matter in accordance with law, after giving opportunity for cross-examination. But in stead of cross-examining the witnesses, the petitioner filed another petition in C.M.P.No.10205 of 2018 and the same was also dismissed. Challenging the same, he has filed the present criminal revision case before this Court.

7.A careful reading of the entire materials, it is seen that the respondent has filed a complaint against the petitioner for the offence under Section 138 of the Negotiable Instruments Act. Since the petitioner has denied his signature found in the disputed cheque, he has filed the petition originally in C.M.P.No.3111/2013 and though the same was allowed, no effective steps were taken. In stead of taking steps, he left for 3 years and thereafter, after 3 years, he filed another petition and the same was dismissed and the same was challenged before this Court and this Court also dismissed the Crl.R.C.No.21/2018 on 12.04.2018. Thereafter, without



challenging that order, he contested the matter and lost the case in S.T.C.No.586/2012 and thereafter, filed an appeal and the appellate court remanded back the matter to the trial court with a direction to dispose of the matter, after giving opportunity for cross-examination. Once again, he has filed an application for the very same relief. Therefore, this Court is of the opinion that when an opportunity was given, without utilizing the same, with an intention to stall further proceedings in S.T.C, the petitioner has filed similar petitions again and again. It shows that the petitioner, only in order to protract the case, has filed petition after petition for the very same relief. Therefore, under the said circumstances, this Court does not find perversity in the order passed by the learned trial court and there is no merit in this revision petition.

8.In the result, this revision is dismissed by confirming the order dated 09.11.2018 passed in Crl.M.P.No.10205 of 2018 in S.T.C.No.586 of 2012 by the learned Fast Track Court (Magistrate Level), Karur. Consequently, connected Crl.M.P.No.25 of 2019 is also dismissed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Vs

To

1.The Fast Track Court (Magistrate Level), Karur

2.The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai (2 copies)

+1 CC to Mr.K.SURESH, Advocate (SR-10985[F] dated 11/03/2020)

+1 CC to M/s.APN LAW ASSOCIATES, Advocate (SR-11536[F] dated 13/03/2020)

order made in
Cr1.R.C. (MD) .No.1 of 2019
11.03.2020

VB(23.03.2020) 4P 6C