



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2021

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

Cr1.R.C.No.882 of 2015
and
M.P.No.1 of 2015

Mala

... Petitioner

Vs.

K. Periyasamy

... Respondent

PRAYER: Criminal Revision filed under Section 397 and 401 of Criminal Procedure Code, to set aside the order passed in C.M.P.No.972 of 2014 on the file of the Chief Judicial Magistrate, Salem, dated 26.11.2014.

For Petitioner : Mr. Yogharaj
for M/S. R. Marudhachalamurthy

For Respondent : No Appearance

O R D E R

This Criminal Revision is filed seeking to set aside the order passed in C.M.P.No.972 of 2014 on the file the Chief Judicial Magistrate, Salem, dated 26.11.2014.

2. Heard, the learned counsel for the petitioner. Despite service of notice and the name of respondent having been printed in the cause list, none appears on behalf of him.

3. The respondent / accused in S.T.C.No.16 of 2012 before the IV Judicial Magistrate, Salem is the revision petitioner herein. The respondent herein has filed the above STC based upon the dishonor of the cheque dated 27.03.2011 and the case was taken cognizance. When the matter was posted for cross examination of PW.1, the PW.1 is said to have deposed that the postdated cheque is 27.09.2011 and the cross examination was completed and the respondent evidence is also completed.



4. At this juncture, the learned counsel for the respondent/ accused filed C.M.P.No.972/2014 before the Chief Judicial Magistrate, Salem stating that after cross examination of the PW.1, the counsel for the private complainant made a representation in the Court about the wrong date and hence wanted to correct the date which was said to have been refused by the Judicial Officer namely learned Judicial Magistrate. Hence, he filed C.M.P.No.972/2014 before the Chief Judicial Magistrate to conduct a departmental enquiry as to how manipulation in the deposition as to the date of the cheque has taken place and to retrieve the deposition of PW.1 to his original position. The said application was considered by the Chief Judicial Magistrate, Salem and the same was dismissed and hence the revision.

5. Learned counsel for the revision petitioner wanted the deposition to be retrieved to the original position namely 27.09.2011 instead of 27.03.2011 as it has been altered. The Chief Judicial Magistrate in his order had categorically stated that departmental enquiry is already initiated against the typist and also held that portion of the evidence alone should not be looked into and entire evidence to be looked into by the Court while assessing the credibility of the witness.

6. On perusal of the cheque, there is no correction. It is a specific case of the revision petitioner that P.W.1 in the witness box had stated that the date of the postdated cheque is 27.09.2011 and it was also been brought to the notice of the Judicial Officer that once an evidence is recorded, there cannot be any correction. However, after the respondent side evidence is over, it is found that there was an alteration to the date in the evidence.

7. Since departmental proceedings has already been initiated and the same is pending, taking note of the affidavit filed by the learned counsel for the petitioner and also observation made by the learned Judicial Magistrate, in the interest of Justice the following order is passed:

(i) Keeping in mind, the general rule of law that the portion of the evidence alone should not be looked into, the entire evidence that was recorded on either side has to be taken note of, while assessing the credibility of the witness.

(ii) I am not expressing any opinion as to the merits of the case except to say that the PW.1 evidence with regard to date of the cheque should not be considered by the trial Court while considering the merits of the case, since it appears to be a manipulation on the cheque which is yet to be postdated cheque. Accordingly, the version of P.W.1 regarding the date of the



cheque is to be not considered by the trial Court. In all other aspects, the evidence of P.W.1 can be looked into and the evidence of R.W.1 and other documentary evidence to be considered by the trial Court.

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(iii) Accordingly, the stay granted by this Court by way of interim order stands vacated. The learned Judicial Magistrate is directed to dispose of the STC No.16 of 2012, subject to the condition mentioned in No.1, as to the evolution of the evidence of PW.1 as to the date of the cheque.

8. With this observation, the Criminal Revision Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

AT

To

1.The Chief Judicial Magistrate,
Salem.

+1cc to Mr.R.Marudhachalamurthy, Advocate (SR No.26213)

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AKII (CO)
PR (16/08/2021)