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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Cr1.R.C.No.926 of 2015
and
M.P.No.1 of 2015

N.Manivanna Sudevan

... Petitioner

.. Vs ..

S.Kotravel Murugan

....Respondent

Prayer :- Criminal Revision filed under 397 and 401 of the Criminal Procedure Code, to set aside the order dated 10.08.2015 made in C.M.P.No.4923 of 2015 in S.T.C.No.45 of 2014 on the file of the Judicial Magistrate, Fast Track Court No.1, Erode.

For Petitioner : Mr.C.Ramaraj
For Mr.M.Guruprasad

For Respondent : No appearance

O R D E R

The respondent is absent. His name is printed in the cause list.

2. The accused in S.T.C.No.45 of 2014 is the revision petitioner herein.

3. The learned counsel for the petitioner submits that the petitioner has been arrayed as an accused and prosecuted for the offence under Section 138 of Negotiable Instruments Act by the respondent herein. The allegation made against the petitioner is that he has borrowed a sum of Rs.1,00,000/- from the complainant and to discharge the said existing liability, the petitioner/accused had given the post dated cheque drawn on



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ICICI Bank Limited, Erode Branch dated 09.03.2013 bearing Cheque No.936499 for sum of Rs.1,00,000/-. When the said cheque was presented for collection on 10.03.2013 through the complainant Banker IDBI Bank Ltd., Erode Branch, to the dismay of the respondent/complainant, the cheque was returned on 11.03.2013 as "ACCOUNT CLOSED".

4. The respondent issued a legal notice on 27.03.2013 and it was alleged that the petitioner received the same on 30.03.2013. He further states that the name and the address of the complainant is not stated in that notice and they issued rejoinder notice on 14.06.2013 and the same was received by the accused on 21.06.2013. Even after the receipt of the notices under Section 138(b) of the Negotiable Instruments Act, the accused did not come forward to settle the outstanding liability. Thereafter, the respondent presented a complaint before the learned Judicial Magistrate No.1, Erode and the same culminated into S.T.C.No.45 of 2014.

5. During the time of the trial, P.W.1 was examined and documents were marked. In the cross-examination, it is stated that the cheque was filled by some other person. However the complainant before the trial Court has stated that the cheque was filled by the accused himself. After that, he has received the money and to disprove the same, he has filed application in C.M.P.No.4923/15 under Section 45 of the Evidence Act to send the disputed the cheque for referring examination by Director of Forensic Science Laboratory for comparing the handwriting found in the cheque with the admitted handwriting of the petitioner. The said petition was dismissed hence the revision.

6. Heard the learned counsel for the revision petitioner.

7. Perused the records.

8. After going through the cross-examination of P.W.1 and the reply notice issued by the respondent before the trial Court (petitioner herein), I find that when the execution of the disputed cheque itself is under question and the consideration said to have been passed, is only after the issuance of the cheque, namely the consideration was paid after the cheque was issued, wherein the signature is also disputed. Hence, I find that, in the interest of justice, the revision petitioner has to be given an opportunity to probablize his defence.

9. Accordingly, this Criminal Revision Petition is allowed and the order dated 10.08.2015 made in C.M.P.No.4923 of 2015 is set aside. The learned Judicial Magistrate -I, Erode is directed to send the cheque along with the admitted signature of the



respondent to the concerned Forensic Department, within a period of 15 days from the date of receipt of a copy of this order, with a request to the Forensic Department to give their opinion within 30 days therefrom and thereafter the learned Judicial Magistrate, Fast Track Court No.1, Erode shall dispose of the S.T.C.No.45 of 2014 within a period of three months from the date of the receipt of the report of the Forensic Department.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

nvi

To

1. The Judicial Magistrate,
Fast Track Court No.1,
Erode.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.29780

Crl.R.C.No.926 of 2015 and
M.P.No.1 of 2015

UM(CO)
SU(26/07/2021)