

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 05.05.2021
CORAM

THE HONOURABLE Mr. JUSTICE G.R.SWAMINATHAN

Crl.RC.No.261 of 2021

S.Chandramohan

...Petitioner

Vs

T.R.Manickem

...Respondent

PRAYER: Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C, may be pleased to call for the entire records in Crl.MP.No.10032 of 2017 in CC.No.04 of 2017 dated 26.02.2021 on the file of the learned Judicial Magistrate, Fast Track Court @ Magisterial Level-I, Coimbatore and set aside the same.

For Petitioner : Mr.s.Sathya Narayanan

For Respondent : No appearance

O R D E R

Heard the learned counsel for the petitioner. The petitioner figured as an accused in C.C.No.4 of 2017, dated 26.02.2021, on the file of the learned Judicial Magistrate-I, Fast Track Court @ Magisterial Level, Coimbatore, for offence under Section 138 of negotiable Instruments Act. Soon after receiving the summons in this case, the petitioner took out an application under section 45 of the Indian Evidence Act for filing Crl.MP.No.100 of 2017 . However, the said application came to be dismissed only last year i.e. on 26.02.2020. It appears that the petitioner did not receive the copy of the same immediately. That explains the delay in challenging the said order.

2. The learned counsel appearing for the petitioner fairly states that since the statutory presumption under section 139 of NI Act has been drawn against the petitioner, it is the duty of the petitioner to rebut the same. It is for that purpose he has sought to refer the pro-note as well as the cheque in question for obtaining the expert's opinion. The specific stand of the petitioner is that the signature found in the pro-note as well as the cheque in question are not that of the petitioner and it is a rank forgery. However, the learned trial Magistrate declined to accept the said stand of the petitioner and dismissed the petition. Challenging the same, the revision case

has been filed.

3. The learned counsel for the petitioner reiterated the contentions set out in the memorandum of grounds. He also took me through the testimony of the witnesses.

4. I wanted to know the stand of the petitioner in his reply notice. The copy of the notice is enclosed by the petitioner at page No.131 of typed set of papers. In the reply notice, dated 16.06.2015, the petitioner had stated that he had given the cheque as security to the complainant. However, it has been further stated that it was not filled up. Even during the cross examination, the petitioner has accepted the signature as that of him. However, he denied that it was executed in favour of the complainant. In the pro-note, two witnesses have been shown. The petitioner had also specifically denied that he had executed the pro-note in their presence.

5. Since, the signature appearing in the pro-note as well as the cheque has been admitted by the petitioner herein, as rightly held by the Court below, there is no need to refer the matter for expert opinion. However, as there is a ocean of difference between admitting one's signature and the admitting execution of the instruments in question. Therefore, the dismissal of revision case will not have any bearing on the petitioner's defence in the trial. The Court below definitely should bear in mind the difference between admitting one's signature in the cheque and admitting the execution of instruments in question.

6. The Criminal Revision Case is dismissed.

Sd/-
Assistant Registrar
(Vacation Officer)

//True Copy//

Sub Assistant Registrar

rli

To

1.The Judicial Magistrate,
FTC magistrate level No.1
Coimbatore.

+lcc to Mr.C.Selvaraj,Advocate,Sr.27119

Cr1.RC.No.261 of 2021

GMR (CO)

baf 12/05/2021