



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2021

CORAM :

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRIMINAL REVISION CASE NO.1015 OF 2021

AND

CRL.M.P.NO.13354 OF 2021

Thirumalai

...Petitioner

..Vs..

Prabhu

...Respondent

PRAYER : Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C to set aside the order dated 04.10.2021 made in C.M.P No.530 of 2021 in S.T.C.No.210 of 2017 on the file of the learned Judicial Magistrate, Fast Track Court No.II, Erode.

For Petitioner : Mr.M.Guruprasad

O R D E R

This Criminal Revision Case has been filed against the dismissal of the petition filed under Section 254(2) of Cr.P.C to permit the accused to examine the listed witnesses on his side.

The case of the prosecution in brief is as follows:

2. The petitioner is the accused in S.T.C.No.210 of 2017 on the file of learned Judicial Magistrate, Fast Track Court No.II, Erode, had filed the petition under Section 254(2) of Cr.P.C on the ground that he had issued the disputed cheque at the time of borrowing money from the defacto complainant to discharge the bank dues and that he had issued only an empty cheque to the respondent without any signature and the respondent/complainant had forged his signature and filed the above case to get unlawful gain. The Petitioner had earlier filed C.M.P.No.1402 before the Trial Court seeking to call for the account opening form which consist the specimen's signature of the petitioner. The Trial Court had directed the petitioner to give details of the contemporary signature of the petitioner. The petitioner had submitted that he had issued cheque to M/S Cholamandalam investment on 03.03.2016 towards the due amount and further on 11.05.2016 had issued another cheque to the same



company. He had stated that the date of borrowal and issuance of cheque date is 11.12.2016 and therefore, the above cheques containing the signature of the petitioner has to be sent for from the bank to send the same for expert opinion.

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3. The respondent/complainant had filed his counter stating that the issuance of the cheque Ex.P1 had been admitted by the petitioner and that the cheque had been returned with an endorsement insufficiency of funds and that the petitioner had not replied to the statutory notice. The respondent/complainant had further stated that no one can issue any cheque without signing the cheque and the same way no one will receive an unsigned cheque. Further, though the petitioner had stated that the respondent was a stranger to him, he had admitted to have deposited amount in the account of the complainant on 08.04.2015 and 06.05.2015 and thereby, the respondent/complainant is known to the petitioner. Further, the cheques mentioned as contemporary documents were issued prior to the issuance of the cheque Ex.P1 and thereby connected to the cheque and that the petitioner had filed this petition with the view to delay the proceeding and thereby this petition has to be dismissed.

4. The Trial Court after hearing both sides and perusing the materials available on record, finding that the petition was filed at the fag end of the Trial at the stage of arguments and an abuse of process, had dismissed the petition, against which the revision has been filed.

5. The learned counsel appearing for the petitioner would submit that the petitioner had only issued the unsigned blank cheque to the respondent/complainant whereas the respondent/complainant had forged the signature of the petitioner and had presented the cheque and filed the complaint and thereby it was necessary that the expert witnesses have to be called and the signature has to be compared.

6. Heard the counsel and perused the materials available on record.

7. This petition had been filed under Section 254(2) Cr.P.C to examine witnessess on his side. The petition had been filed at the stage when the case was posted for argument. The complaint had been taken on file by the Trial Court on 19.05.2017. Thereafter, the respondent/complainant had examined himself as P.W.1 on 15.03.2018 and the petitioner/accused was questioned under Section 313 Cr.P.C on 13.04.2018 and the case had been adjourned for the defence side evidence on 09.05.2018 and the petitioner/accused had filed a petition under Section 311 Cr.P.C for recalling P.W.1 for the purpose of cross examination.



8. Thereafter, the case had been adjourned for cross examination of P.W.1 from 14.06.2018, 17.07.2018, 01.09.2018, 06.10.2018, 15.11.2018, 17.12.2018, 02.02.2019. Since, the petitioner/accused not ready for cross examining the complainant the Trial Court had adjourned the case for argument. Thereafter, the petitioner had again filed the petition to recall P.W.1 for the purpose of cross examination and the same was allowed on same date and again the case was adjourned for cross examination of P.W.1 on the following dates 23.10.2019, 03.16.2019, 18.06.2019 25.06.2019, 17.07.2019 and for continuation of cross examination 08.08.2019, 12.09.2019 and 10.10.2019 and thereafter, the evidence of P.W.1 was closed due to default of complainant and the cross examination of P.W.1 had been completed only on 10.12.2019. Again the case had been adjourned for defence side witness to 03.01.2020 and since the petitioner had not filed the list of witnesses, the defence side evidence was closed on 13.02.2020. The Trial Court had held that the above case history revealed that the accused had taken nearly 18 months time for cross examining P.W.1 and most of the time the petitioner/accused was not ready even when the complainant was available for cross examination. Further, the Trial Court had also held that it had extended opportunity to produce the defence witnesses on following the dates viz., 13.04.2018 to 09.05.2018 and 10.12.2019 to 03.01.2020 whereas the petitioner/accused had not turned up even for filing the list of witnessess.

9. Subsequently, the petitioner/accused had filed the petition under Section 311 and 254(2) Cr.P.C in C.M.P.Nos.1401 & 1402 of 2020 for reopening and send for the account opening form and specimen signature from CUB Bank, Edapadi Branch for the purpose of sending the Ex.P1 for getting expert opinion without mentioning the date of account opening form and specimen signature. Subsequently, petition for reopening filed in C.M.P.No.1401 of 2020 had been dismissed by the Trial Court on 13.06.2020. Despite sufficient opportunity having been given by the Trial Court, the accused had not submitted the date of the above said documents and had filed another petition seeking send for cheques by changing the entire prayer in the petition. Subsequently, on the next hearing date i.e., 10.02.2021 he had not pressed the petition and on the same day had filed the present petition in C.M.P.530 of 2021. Further, the Trial Court had also found that despite the direction to the petitioner to submit the date of account opening form and specimen signature on 17.06.2020 the petitioner had withdrawn the petition as not pressed after 7 months of said direction and thereby, the Trial Court had concluded that the petition had been filed only to drag the delay proceedings. The Trial Court had also found that the Ex.P3 /legal notice dated 24.01.2017 addressed to the accused was duly served on the petitioner on 31.01.2017 and the



petitioner had not taken any steps to send the reply by denying his signature in the cheque/Ex.P1 that it was forged. Further, the petitioner had also not denied the signature during the questioning under Sections 251 and 313 of Cr.P.C. Further, the Trial Court holding that inspite of giving sufficient opportunity for let in defence evidence, the petitioner had not chosen to file the petition during the defence evidence and had come up with the application only when the case was posted for arguments, had dismissed the petition.

10. I do not find any infirmity in the order passed by the learned Judge. This Criminal Revision Case stands dismissed. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar

vri/shk

To

1.Learned Judicial Magistrate,
Fast Track Court No.II, Erode.

2.The Public Prosecutor (Crl side),
High Court, Madras.

+1cc to Mr.M.Guruprasad, Advocate Sr.No.69873

Crl.R.C.No.1015 of 2021

SVI(CO)
RVM(11/01/2022)