



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	19.03.2021
DELIVERED ON	01/04/21

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CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

Crl.RC(MD)Nos. 645 & 646 of 2016
and Crl.M.P. Nos. 8764 & 8765 of 2016

A. Thinahar ...Petitioner/Petitioner/Sole accused
in both Petitions

Vs.

M.Varuvel ...Respondent/Respondent/Complainant
in CRL.RC.(MD).No.645 of 2016

V. Jain Sherely ...Respondent/Respondent/Complainant
in CRL RC.(MD).No.646 of 2016

PRAYER in Crl.RC(MD) No.645 of 2016 : Criminal Revision filed under Section 397 r/w 401 of the Criminal Procedure Code, to set aside the order, dated 07.06.2016 made in Crl.MP No.1477 of 2016 in C.C.No.494 of 2012 on the file of the learned Judicial Magistrate, Fast Track (Magisterial Level) No.II, Nagercoil and allow the above revision petition.

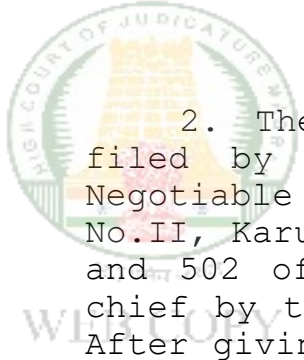
PRAYER in Crl.RC(MD) No.646 of 2016 : Criminal Revision filed under Section 397 r/w 401 of the Criminal Procedure Code, to set aside the order, dated 27.07.2016 made in Crl.MP No.1040 of 2016 in C.C.No. 502 of 2012 on the file of the learned Judicial Magistrate, Fast Track (Magisterial Level) No.II, Nagercoil and allow the above revision petition.

In both the Petitions:

For Petitioner : Mr.S. Ramsundar Vijayaraj
for Veera Associates
For Respondent : Mr.Mohammed Suhail
for Ajmal Associates

COMMON ORDER

Crl.RC(MD) Nos.645 & 646 of 2016 have been filed to set aside the order, dated 07.06.2016 in Crl.MP No.1477 of 2016 in C.C.No.494 of 2012 and the order, dated 27.07.2016 made in Crl.MP No.1040 of 2016 in C.C. No. 502 of 2012 passed by the learned Judicial Magistrate, Fast Track (Magisterial Level) No.II, Nagercoil.



2. The revision petitioner is a sole accused in complaints filed by the respondent herein under Sections 138 & 142 of Negotiable Instruments Act, before the learned Judicial Magistrate No.II, Karur and the same were taken on file in C.C. Nos.494 of 2012 and 502 of 2012. The respondent herein was examined as P.W.1 in chief by the Court below in C.C. Nos.494 of 2012 and 502 of 2012. After giving opportunities, the revision petitioner did not turn up to cross examine the P.W.1. In the meantime, the revision petitioner has filed a petitions in Crl.M.P. No.2036 of 2016 in C.C. No. 278 of 2016 and Crl.MP No.1040 of 2016 in C.C.No. 502 of 2012, under Section 45 of Indian Evidence Act, to send the cheque for expert opinion to compare the age of ink. After perused the records, the Court below has passed an order, dated 07.06.2016 in Crl.M.P. No.2036 of 2016 in C.C. No. 278 of 2016 and Crl.MP No.1040 of 2016 in C.C.No. 502 of 2012 and dismissed the petitions. Aggrieved over the same, the revision petitioners have preferred the Criminal Revision case.

3. The learned Counsel for the revision petitioner submitted that the Hon'ble Supreme Court in several Judgments has clearly held that the right of fair trial for any accused is very essential. He further submitted that the petitioner has got a doubt about the writings on the said cheque and hence, he has filed petitions seeking to send the cheques to determine the age of ink on the cheque, but, without considering the vital points, the Court below has dismissed the petitions. He further submitted that the orders are liable to be set aside. Therefore, he prays for allowing this petition.

4. Per contra, the learned counsel appearing for the respondent submitted that the revision petitioner has filed petitions in Crl.M.P. No.2036 of 2016 in C.C. No. 278 of 2016 and Crl.MP No.1040 of 2016 in C.C.No. 502 of 2012 after four years from the date of the institution of the criminal cases. He further submitted that till date, the cases were posted for argument on the side of the petitioner side. He further submitted that the aforesaid petitions were filed to drag on proceedings. Therefore, he prays to dismiss the Criminal Revision case.

5. Heard the learned Counsel appearing for the respective parties and also perused the available materials.

6. The revision petitioner/sole accused in both the Criminal Revision Petitions have been filed to set aside the order, dated 07.06.2016 in Crl.MP No.1477 of 2016 in C.C.No.494 of 2012 and the order, dated 27.07.2016 made in Crl.MP No.1040 of 2016 in C.C.No. 502 of 2012 passed by the learned Judicial Magistrate, Fast Track (Magisterial Level) No.II, Nagercoil.

7. In both Criminal miscellaneous petitions have been filed under Section 45 of Indian Evidence Act to send the disputed cheque to expert to determine the age of ink found in the cheque. Both the



petitions are related to same issues. Therefore, both the revisions are disposed by way of common Order.

8. In both criminal cases, P.W.1 was examined in chief and documents were marked. The petitioner/accused did not come forward to cross examine the P.W.1 and after giving opportunities evidence was closed by the Court below. The petitioner has filed a petition under Section 311 of Cr.P.C in both the cases the same were also allowed. Even then, P.W.1 was not cross examined by the petitioner/accused. The respondent/complainant side argument heard and the criminal cases were posted for petitioner side argument. At this stage, these petitions have been filed. Both the cases were pending for eight months, after, P.W.1 was examined in chief. If, really the petitioner has not signed in the cheque, he might have raised an objection even in the first instance.

9. The relevant portion of the Judgment reported in 2007 (2) SCC 258, Kalyani Baskar Vs. M.S. Sampooram, is extracted hereunder:

"Dishonoured cheque an offence under Section 138 of Negotiable Instruments Act - Prayer by accused to send that cheque for opinion of handwriting expert to ascertain genuineness of signature on it - Rejection of - Propriety of - Held, was improper - Magistrate should have granted such a request unless he considered that the object of the accused was vexation or delaying the criminal proceedings."

10. Paragraph No.2 of the Judgment in Crl.R.C. Nos.49 & 50 of 2009, R.Jagadeesan Vs. N. Ayyasamy, is extracted hereunder:

.....

"The respondents in these two revisions, who are the accused facing prosecution for an offence under Section 138 of the Negotiable Instruments Act, filed petitions before the learned Judicial Magistrate seeking to forward the cheques in question for examination by the Director of Forensic Science, Chennai to express opinion regarding the age of the writings as well as the signatures found on the cheques. The learned Magistrate concerned allowed both the petitions. Aggrieved over the same, the petitioner, who is the complainant in those cases, is before this Court with these revisions."

11. The revision petitioner/accused wants to drag the proceedings. Therefore, the Court below has correctly dismissed the petitions. This Court has no valid reason to interfere with the findings of the Court below.

12. Taking note of the above facts and circumstances, these Criminal Revision Cases are dismissed and the Order, dated 07.06.2016 in Crl.MP No.1477 of 2016 in C.C.No.494 of 2012 and the order, dated 27.07.2016 made in Crl.MP No.1040 of 2016 in C.C.No. 502 of 2012 passed by the learned Judicial Magistrate, Fast Track



(Magisterial Level) No.II, Nagercoil, are hereby confirmed. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The Judicial Magistrate,
Fast Track (Magisterial Level) No.II,
Nagercoil,
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
3. The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-15390[F] dated 07/04/2021)

+2 CC to M/s.VEERA ASSOCIATES, Advocate (SR-15574[F] dated 09/04/2021)

Crl.RC(MD)Nos. 645 & 646 of 2016
01.04.2021

KVN(CO)

KB(23.04.2021) 4P 7C