



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated: 25.11.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.10675 of 2018
and
Crl.MP(MD)No.4811 of 2018

Bharathiraja : Petitioner/Petitioner/Accused

Vs.

Edwin Calvin Paul
rep. by his Power Holder
Edwin Johnson : Respondent/Petitioner/Petitioner

Prayer: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the records from the Fast Track Court No.1, Nagercoil (Magistrate Level) in Crl.M.P No.3756 of 2017 made in C.C No.127 of 2013, dated 07.04.2018 and set aside the same.

For Petitioner : Mr.V.H.S.Prathap
For Respondent : Mr.C.K.M.Appaji

ORDER

This petition has been filed by the petitioner seeking to set aside the order passed by the Fast Track Court No.1, Nagercoil (Magistrate Level) in Crl.M.P No.3756 of 2017 in C.C No.127 of 2013, dated 07.04.2018.

2.The complaint has been filed by the Edwin Johnson Paul, who is the respondent herein against the petitioner herein Bharathiraja for punishing the accused person for having committed the offence under Section 138 of the Negotiable Instruments Act. During the pendency of the above said proceedings, the accused person namely Bharathiraja filed a petition before the trial court under section 311(A) of Cr.P.C to direct the complainant to appear before the trial court and admit his voice in the Audio CD, which was recorded during the course of conversation between them, when the matter was pending before the trial court. That petition came to be dismissed by the trial court observing that such a plea is not maintainable and it is violation of of protection, that has been granted under Article 20(3) of the Constitution of India. So against that order, the accused person has preferred this criminal

original petition.

3. In the cause title of the trial court, there is a mistake with regard to arraying of the parties. Edwin Calvin Paul has shown as accused, but whereas he is the complainant before the trial court. P. Bharathiraja is the accused, but he has shown as complainant in the order. Since it is a mistake on the face of records, but however, the petition came to be filed by the accused namely Bharathiraja. Against the dismissal order, the accused namely Bharathiraja has preferred this criminal original petition.

4. Heard both sides.

5. It is a matter of offence punishable under Section 138 of the Negotiable Instruments Act, which was instituted in 2013. Now the trial process is almost over. From the records, it is seen that when the matter was taken up for defence side evidence, a petition under section 91 Cr.P.C came to be filed. That petition was allowed and the Audio CD, which contains the conversation between the parties were also produced before the court and that CD was also sent to the Forensic Science Department for expert examination. But could not succeed. Because the Forensic Science Laboratory has returned the request stating that they are not entitled to any such request, which involves civil dispute. So later this petition came to be filed by the accused for a direction to the complainant to appear before the trial court and admit the voice that is available in the Audio CD and further, it has been requested that Audio CD must be played in the open court. This is the background of the issue.

6. It appears that the conversation alleged to have been recorded during pendency of the proceedings. Even though the trial court was of the view that such a course is not available, which will amount to testimonial compulsion under Article 20(3) of the Constitution of India, but however, the learned counsel appearing for the petitioner would submit that giving voice sample will not amount to testimonial compulsion, as has been held in various judgments of the High Courts. It is a settled law that directing the party to give sample voice will not amount to testimonial compulsion.

7. The learned counsel appearing for the petitioner straightway relied upon the judgement of this court in the case of **P. Kishore Vs. State rep. By Additional Superintendent of Police, SPE/CBI/ACB/Chennai** (Criminal Revision Case No.1752 of 2011 dated 16.11.2017), wherein this court after going through the various judgments as well as the mechanism of the voice comparison of voice conversation came to the conclusion that it will not amount to testimonial compulsion. Here the voice, that has been brought to be verified is that of the complainant. So the reasons of the



trial court may not be correct.

8. Perusal of the records shows that the disputed conversation alleged on the face of the record, which took place privately between the parties during the pendency of the proceedings to make out a settlement. When settlement talks are undertaken during the course of trial process between the parties, it may not be proper on the part of a particular party to record the conversation and produce it before the trial court as additional evidence, which will amount to illegal. Because the compromise talks is a confidential communication between the parties. During the process of compromise, the parties may put forth many things. But that cannot be permitted to be taken advantage by the parties during the trial process.

9. More-over, recording of conversation without permission of the other party is also totally illegal. But whatever it may be, now the CD has been produced before the trial court and that has been sent to the Forensic Science Laboratory and that was returned. Still if the petitioner feels that he is entitled to produce those documents, then he can very well get permission of the court and produce the document by including the transcription of the conversation and it is for the court to admit or reject the evidence. So except that, the entire process that has been undertaken by the accused before the trial court is illegal and cannot be permitted at all.

10. In view of the above, this Criminal Original Petition stands **dismissed**. However, there shall be a direction to the Judicial Magistrate, (FTC), Nagercoil, to complete the trial process within a period of three months from the date of receipt of a copy of this order and after disposing the same on merits, the compliance report must be sent to this Registry forthwith. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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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 source court copy, shall be the responsibility of the advocate/litigant concerned.



To

The Judicial Magistrate,
Fast Track Court No.1,
(Magistrate Level),
Nagercoil.

Copy to

The Registrar(Judicial),
Madurai Bench of Madras High Court,
Madurai.

Cr1.OP(MD)No.10675 of 2018
25.11.2021

MMS (CO)
SB(13.12.2021) 4P 3C