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Crl.RC.No 335 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2022

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THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRL.RC No. 335 of 2020
and Crl.MP.No, 2559 of 2020

R.Basharudeen

... Petitioner

VS.

M.Sridharan

... Respondent

Prayer: Criminal Revision Petition filed under Sections 397 r/w. 407 CrPC to set aside the order dated 26.08.2019 passed in Crl.MP.No. 421 of 2018 in STC.No. 358 of 2017 on the file of the Judicial Magistrate, Uthangarai, Krishnagiri.

For Petitioner : Mr.E.Kannadasan

For Respondent : M/s.P.M.Jayachandran

ORDER

Aggrieved by the order passed in Crl.MP.No. 421 of 2018 in STC.No. 358 of 2017 on the file of the Judicial Magistrate, Uthangarai, Krishnagiri, the present criminal revision petition is filed.



2. Brief facts of the case is that the petitioner and the respondent

herein are the accused and the complainant respectively in STC.No. 358 of 2017. The respondent has filed a private complaint against the petitioner under Section 138 of N.I Act for dishonour of cheques for the amount of Rs.25,00,000/- issued by the petitioner towards the hand loan. The complaint was taken on file in STC. No. 358 of 2017 by the Judicial Magistrate, Uthangarai. The respondent was examined as PW1, but despite several opportunities granted, the petitioner did not cross examined the respondent/PW1. Hence the Judicial Magistrate, Uthangarai was constrained to close the evidence of the complainant and posted for questioning under Section 313 of Cr.PC and after completion of questioning, the case was posted for defence side evidence. Subsequently, the petitioner has filed a petition under Section 45 of Indian Evidence Act seeking expert opinion to determine the impression and the colour of ink in the cheque. The said petition was dismissed by the trial Court . Aggreived by the same, the petitioner/accused has preferred the present criminal revision petition.

3. The learned counsel for the petitioner would submit that to expand the business, the petitioner borrowed a sum of Rs.3,00,000/- from



Crl.RC.No 335 of 2020

the respondent and for security purpose, the petitioner gave a signed unfilled cheque bearing No. 083951 to the respondent. Thereafter, the respondent has filed a private complaint against the petitioner under Section 138 of N.I Act, for dishonour of cheques for a sum of Rs.25,00,000/- which were not actually issued by the petitioner. Therefore to determine the impression and age of the ink on the alleged cheques, the petitioner has filed a petition in Crl.MP.No. 421 of 2018 seeking expert opinion. The said petition was dismissed by the trial Court on the ground that the signature was admitted by the petitioner.

4. The learned counsel for the petitioner would further submit that it is absolutely necessary to get an opinion from the expert as to whether the signature and contents are filled with the same ink on the same date. However, the trial Court without considering the same, had dismissed the petition, which warrants interference by this Court.

5. The learned counsel for the respondent would submit that the petitioner has not disputed the signature in the cheque and he has not received the notice. The respondent was examined as PW1 on 13.07.2017 and posted for cross examination of PW1. Since the petitioner did not cross examine the PW1, the trial Court has closed the evidence of the



Crl.RC.No 335 of 2020

respondent/complainant and posted for questioning under Section 313 of Crpc and the same was completed on 14.02.2018. The learned counsel for the respondent would further submit that after the matter was adjourned for defence side evidence, the petitioner filed the petition invoking Section 45 of Indian Evidence Act, which clearly shows that only to protract the proceedings, the petitioner has filed the said petition. The trial Court has rightly dismissed the petition filed by the petitioner and the same does not require any interference by this Court.

6. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on record.

7. Admittedly, the respondent is the complainant and the petitioner is the accused. Pending proceedings on the complaint in STC.No. 358 of 2017, the petitioner filed a petition in Crl.MP.No.421 of 2018 seeking expert opinion to determine the impression and the colour of the ink on the cheques. The said petition was dismissed by the trial Court on the ground of delay in approaching the Court and also on the ground that there is no technology in India to find out the age of the ink.

8. A careful perusal of records reveal that the petitioner did not receive the statutory notice issued by the respondent, however after filing



Crl.RC.No 335 of 2020

of complaint, the petitioner received the summons. Soon after receiving the summons, he entered into the case, but he had not taken any steps to inspect the documents and not filed any petition under Section 45 of Indian Evidence Act till the respondent entered into the box. The respondent was examined as PW1 as early as on 13.07.2017, but the petitioner did not cross examine the respondent despite several opportunities granted by the trial Court. Lastly on 04.01.2018 also the respondent/PW1 was present but the petitioner did not cross examine the respondent, hence the trial Court closed the evidence of PW1/respondent and questioning under Section 313 Crpc. Even that time also, the petitioner did not file any petition. After a lapse of one year, the petitioner had filed a petition under Section 45 of Indian Evidence Act for expert opinion for determination of impression and the colour of the ink on the cheques, which clearly shows the intention of the petitioner is only to protract the proceedings. The trial Court has rightly observed the above facts and the delay on the part of the petitioner in preferring the petition under Section 45 of Indian Evidence Act and rightly dismissed the petition on the ground that the petitioner has filed the above petition only to drag on the proceedings. This Court finds no perversity in the dismissal order dated 26.08.2019 passed by the trial



Crl.RC.No 335 of 2020

Court viz., Judicial Magistrate, Uthangarai in Crl.MP.No. 421 of 2018 in
STC.No. 358 of 2017 and the same does not require any interference by
this Court.

9. In view of the above, the present criminal revision petition is
dismissed as devoid of merits. Consequently, connected Miscellaneous
Petition is closed.

10. However, considering the pendency of the complaint in
STC.No. 358 of 2017 for more than five years, the Judicial Magistrate,
Uthangarai, Krishangiri District is directed to complete the entire
proceedings in accordance with law, within a period of two (2) months
from the date of receipt of a copy of this order.

21.12.2022

Index : Yes / No
Internet : Yes / No
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To
The Judicial Magistrate, Uthangarai, Krishangiri District.



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Crl.RC.No 335 of 2020

P.VELMURUGAN, J.

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