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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.R.C.NO.900 OF 2014

AND

M.P.NO.1 OF 2014

S.R.Subramaniam

...Petitioner / Complainant

Versus

T.G.Sivakumar

...Respondent / Accused

PRAYER : Criminal Revision Petition filed under Sections 397 and 401 of Cr.P.C, to call for the records relating to the order dated 31.07.2014 made in Crl.M.P.No.4365 of 2014 in STC.No.73 of 2011 on the file of the learned Judicial Magistrate, Fast Track Court-II, (Magisterial Level), Erode, and set aside the same by allowing this Criminal Revision Petition.

For Petitioner : Mr.N.Manokaran

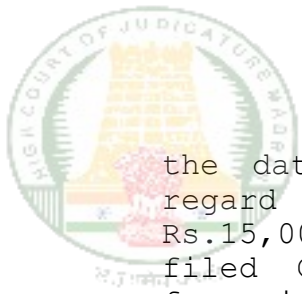
For Respondent : M/s.Meenakshi Sundaram

ORDER

This petition has been filed to call for the records relating to the order dated 31.07.2014 made in Crl.M.P.No.4365 of 2014 in STC.No.73 of 2011 on the file of the learned Judicial Magistrate, Fast Track Court-II, (Magisterial Level), Erode, and set aside the same by allowing this Criminal Revision Petition.

2. The petitioner herein, who is the complainant in STC.No.73 of 2011, filed a petition in C.M.P.No.4365 of 2014 under Section 45 of the Evidence Act, to compare the difference of tint of ink found in the date of Ex.P1 cheque, dated 25.04.2010, with the amount in numerical Rs.15,00,000/-. The trial Court by the order dated 31.07.2014, dismissed the petition for the reason that the prayer sought for in that petition is not clear and also sending the cheque is not proper since earlier the petitioner had filed CMP.No.3657 of 2013 to send Ex.P1 cheque and later he withdrew the same.

3. The learned counsel for the petitioner submitted that the respondent/accused has not disputed the issuance of cheque and



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the date inscribed in the cheque. His only dispute is with regard to the insertion of "1" before Rs.5,00,000/- and made Rs.15,00,000/-. He further submitted that earlier the accused filed CMP.No.728 of 2011, praying to send the cheque for forensic examination to get expert opinion on the material alteration. The learned Magistrate in his requisition letter, dated 15.02.2012 sought opinion by comparing "1" which is found in the amount column and "1" in the date column of the cheque, however, the authorities wrongly sent a report on 10.04.2012 with an opinion that authorship of writing of numerical "1" in the amount column cannot be fixed. Thereafter, the Lower Court on its own, again send the cheque to compare tint of ink between "1" and "5,00,000" and the Forensic Department gave a report stating that the tint of ink used to write the red enclosed numerals "Rs.5,00,000/-" stamped and marked A is different from the tint of ink used to write the red enclosed numeral "1" stamped and marked B", which are found in the amount column.

4. He further submitted that since the respondent/accused had admitted about the issuance of cheque dated 25.04.2010 and to check if the same tint of ink was used, it is necessary to compare "1" in the amount column with the date 25.04.2010 and for that purpose only, he filed the petition in CMP.No.4635 of 2014 sending for forensic examination. However, the Lower Court dismissed the same, which would cause great pre-judice to the petitioner.

5. The learned counsel for the respondent/accused submitted that the petitioner earlier filed a petition under Section 45 of the Indian Evidence Act, which was later withdrawn. The respondent himself also filed a petition stating that there was material alteration in the cheque. The Forensic authorities gave an opinion that the tint of ink used to write the red enclosed numerals "5,00,000" is different from the tint used to write the numeral "1". Hence, it is clear that the petitioner had made a material alteration in the cheque. Further, in the petition filed by the petitioner in CMP.No.4365 of 2014, there is no clarity in the prayer, which is rightly observed by the trial Court and dismissed the same. In view of the same, this revision may be dismissed.

6. Considering the submission and on perusal of the materials, it is seen that the case of the respondent is that he admits the issuance of the subject cheque on 25.04.2010 with Rs.5,00,000/- entered in the amount column and his specific defense is that "1" has been inserted by the petitioner, which has been confirmed by the forensic report. It is the case of the petitioner that since the respondent had admitted the issuance of cheque on 25.04.2010, the date and signature in the cheque, if once the tint of ink is compared with the date on 25.04.2010



and the numerical in Rs.15,00,000/-, which will be in conformity to the petitioner's case and for that purpose, he needs the cheque to be forwarded.

7. The forwarding of the cheque for forensic study for the above purpose, will be beneficial for the trial Court to arrive at the just decision of the case. In view of the same, this Court set asides the order passed by the Judicial Magistrate, Fast Track Court No.II, Erode and directs the Lower Court to send the cheque for comparing the amount of Rs.15,00,000/- more specifically "1" along with on 25.04.2010 found in the cheque to the Forensic Department, who in turn, shall send the report without delay. The said exercise shall be completed within a period of three weeks. The case is pending from the year 2011, hence the Judicial Magistrate, Fast Track Court No.II, Erode is directed to complete the trial in STC.No.73 of 2011 within a period of two weeks therefrom.

8. With the above directions, this Criminal Revision Petition is disposed of. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

dna

To

The Judicial Magistrate,
Fast Track Court-II, (Magisterial Level),
Erode.

+1cc to Mr.N.Manokaran, Advocate Sr.No.8425

CRL.R.C.No.900 of 2014
and
M.P.No.1 of 2014

PCH(CO)
RVM(07/03/2022)