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Crl.R.C.No.1454 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2022

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.1454 of 2022

and

Crl.M.P.No.16358 of 2022

Bhojanapalli Koteswara Rao

... Petitioner

Versus

Ne rella Sathya Narayana

... Respondent

Criminal Revision Case filed under Sections 397 of Criminal Procedure Code to call for the records in Crl.M.P.No.14362 of 2022 in C.C.No.3901 of 2016 on the file of the Metropolitan Magistrate, Fast Track Court No.III (FAC) Saidapet, Chennai – 15 and set aside the order passed in Crl.M.P.No.14362 of 2022 dated 18.08.2022.

For Petitioner : Mr.P.Udayakumar

ORDER

This Criminal Revision Case has been preferred challenging the order dated 18.08.2022 passed in Crl.M.P.No.14362 of 2022 in C.C.No.3901 of 2016 by the learned Metropolitan Magistrate, Fast Track Court No.III (FAC) Saidapet, Chennai – 15.



2. The petitioner is the accused and the respondent is the complainant.

The respondent/complainant filed a complaint in C.C.No.3901 of 2016 for the offence under Section 138 of Negotiable Instruments Act, 1881 [hereinafter referred to as 'N.I.Act' for the sake of convenience]. During the pendency of the said case, the petitioner/accused filed a petition under Section 45 of the Indian Evidence Act, 1872 before the learned Metropolitan Magistrate, Fast Track Court No.III (FAC) Saidapet, Chennai-15 in Crl.M.P.No.14362 of 2021 to send the disputed cheque/ExA.1 to Nutron activation Analysis BARC, Mumbai, Maharashtra, which is a Central Government Organization for determining the age of the signature of the petitioner at his expenses. The said petition was dismissed. Challenging the said order, the petitioner has filed the present revision petition.

3. The learned counsel for the revision petitioner submitted that the respondent filed a complaint under Section 200 Cr.P.C against the petitioner for the offence under Section 138 of N.I. Act. He further submitted that the petitioner never issued any cheque in favour of the respondent. The petitioner divorced his first wife and he got re-married. In subsistence of his first



marriage, the petitioner handed over two signed blank cheques to his first wife in the year 2007 and after divorce there was no transaction between them. After divorce, the disputed cheque was misused by the first wife of the petitioner and filed a false complaint through the respondent/complainant in the year 2012, as if the cheque bearing No.054565 dated 01.11.2012 was issued by the petitioner in favour of the respondent. When the disputed cheque was presented on 08.12.2012, the same was dishonored on 13.12.2012 due to insufficient funds, subsequently a statutory notice was issued on 07.01.2013 and the same was acknowledged by the petitioner on 12.01.2013, for which, he has also sent a reply. After receipt of the reply notice, the respondent filed a complaint in C.C.No.3901 of 2016 for the offence under Section 138 of N.I.Act. Pending Calendar Case, the petitioner filed Crl.M.P.No.14362 of 2021 before the trial Court to send the disputed cheque to the Neutron activation Analysis BARC, Mumbai, Maharashtra. Though the judgment of the Hon'ble High Court of Andhra Pradesh in the case of ***G.V.Rami Reddy vs. D.Mohan Raju*** reported in ***2019(2) ALD 481 (AP)*** was cited by the petitioner, the learned Magistrate failed to utilise the developments of the technology and dismissed the petition. If the disputed cheque is sent for getting expert opinion, it will be helpful to the Court to



find out the truth to arrive at a right conclusion that the revision petitioner has not issued the disputed cheque on the date mentioned in the complaint by the respondent. The learned Magistrate failed to appreciate the entire facts and also without any valid reason simply dismissed the petition, which warrants interference of this Court.

4. The learned counsel for the respondent submitted that the petitioner has not denied the execution of the cheque and he has admitted the signature found in the cheque. Once the petitioner has admitted his signature, there is a legal presumption under Section 139 of N.I.Act that the cheque was issued to discharge the legally enforceable debt and it is for the petitioner/accused to rebut the presumption in the manner known to law that the petitioner has not issued the cheque as contemplated under the complaint. In the case on hand, the respondent filed a case in the year 2016, whereas, after five years i.e., in the year 2021, when the case was posted for arguments the revision petitioner filed this petition only in order to protract the proceedings. Even otherwise, there is no technology to find out the age of ink, which was used to fill the cheque. Therefore, the trial Court has rightly dismissed the petition and there is no merit in the present revision and the same is liable to be dismissed.



5. Admittedly, the respondent has filed a complaint under Section 138 of N.I.Act in C.C.No.3901 of 2016 and the trial also commenced in the said case.

6. On a perusal of the records, it is seen that the petitioner/accused has admitted the signature in the disputed cheque, however, the only ground taken by the revision petitioner is that the cheque was not issued to the respondent as stated in the complaint. He has also stated that the cheque was issued only to his first wife, at the time when he was having cordial relationship with her. Subsequently, they got divorced and the petitioner also got re-married and thereafter, there was no transactions between the petitioner and his first wife. Now the respondent misused the cheque and filed the present complaint.

7. The respondent issued a statutory notice to the petitioner, for which, he sent a reply stating that he has not issued any cheque in favour of the respondent on the said date as alleged in the statutory notice. After sending reply, when the petitioner received summons from the Court in the criminal complaint, if at all he had a doubt, he would have filed a memo before the learned Magistrate and inspect the documents including the cheque. If at all he wanted to get the assistance of an expert opinion, he would have taken the



steps earlier when opportunity was given to him. The petitioner received the notice and sent a reply and also received summons and participated in the trial, thereafter, the petitioner filed petition in Crl.M.P.No.14362 of 2021 invoking Section 45 of the Indian Evidence Act, 1872 to send the disputed cheque to the Neutron activation Analysis BARC, Mumbai, Maharashtra, which is only to protract the proceedings. There is no technology to find out the age of the ink in cheque whether it was issued in the year 2012 or much earlier and the petitioner filed this petition only at the fag end of trial only to protract the case further.

8. Considering the facts and circumstances, this Court does not find any illegality or infirmity in the order passed by the trial Court and there is no perversity in the order dated 18.08.2022 passed in Crl.M.P.No.14362 of 2022 in C.C.No.3901 of 2016 by the learned Metropolitan Magistrate, Fast Track Court No.III (FAC) Saidapet, Chennai – 15. Accordingly, this Criminal Revision Case is dismissed on the ground of delay and laches. Consequently, connected miscellaneous petition is closed.

02.11.2022

Index : Yes/No
Speaking Order/Non Speaking Order
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To

The Metropolitan Magistrate,
Fast Track Court No.III (FAC)
Saidapet, Chennai – 15.



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P.VELMURUGAN, J.

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