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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2022

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.R.C.No.1076 of 2021
and Crl.M.P.Nos.13864 & 13865 of 2021

B.Vimalraj
Petitioner/Accused

..

Vs.

R.Vijayakumar
Respondent/Complainant

...

PRAYER: The Criminal Revision Case is filed under Section 397 r/w 401 of the Code of Criminal Procedure, pleaded to set aside the order passed in C.M.P.No.1481 of 2021 in S.T.C.No.83 of 2013 on the file of Judicial Magistrate, Fast Track Court, at Tiruvannamalai, dated 16.11.2021.

For Petitioner : Mr.S.Ramkumar

O R D E R

(This case has been heard through Video Conferencing)

This Criminal Revision has been filed against the order passed by the Judicial Magistrate, Fast Track Court, Tiruvannamalai in CMP.No.1481 of 2021 in STC.No.83 of 2013 dated 16.11.2021 dismissing the petition filed under Section 45 of the Indian Evidence Act to sent the alleged cheque for expert opinion.

2. The brief facts of the case is as follows :-

The petitioner is accused in STC.No.83 of 2013 filed by the respondent/complainant for the offence under Section 138 of the Negotiable Instruments Act. The case of the respondent/complainant is that the petitioner had borrowed an amount of Rs.2lakhs from him and towards discharge of the liability had issued a cheque bearing No.293752 dated 19.07.2012



for a sum of Rs.2lakhs drawn on Indusland Bank Limited, Anna Nagar Branch, Chennai. When the respondent/complainant had deposited the said cheque into his account for collection it was returned on 23.07.2012 with an endorsement account closed. Thereafter, the respondent had issued a lawyer notice on 14.08.2012 and it was refused by the petitioner/accused. Hence, the respondent/complainant had filed the petition under Section 138 of the Negotiable Instruments Act.

3. During the course of trial, the petitioner had filed CMP.No.1481 of 2021 contending that he had not received any legal notice and that one Loganathan who was his friend and room mate had taken one unsigned blank cheque without his knowledge and handed over it to the respondent/complainant and he had filed the complainant based on that. It is the further case of the petitioner/accused that he never signed and issued the cheque to the respondent/complainant at any point of time and the handwriting and the signature found in the cheque does not belong to him and it was necessary to sent the alleged cheque for Forensic Sciences Department for handwriting verification.

4. The respondent/complainant had filed counter stating that the petitioner issued the cheque for Rs.2lakhs towards discharge of liabilities and that it was presented only on his instructions. The respondent/complainant further contended that the notice was sent to the proper address of the petitioner, on 16.08.2012 and intimation was given to the respondent/complainant and after waiting for morethan 15days, the notice had been returned by the postal authorities, stating that the petitioner/accused had not claimed the same.

5. It was further contended by the respondent/complainant that the case was taken up on file in STC.No.83/2013 and for the past eight years the petitioner/accused had not raised a plea that he did not sign the cheque and that the vexatious petition with false averments has been filed only to delay and protract the proceedings.

6. The Trial Court finding that the petitioner had not filed any contemporaneous signature documents or anti litem signature documents for comparison with the alleged signature for comparison and also finding that the case was pending for complainant's side evidence and the petitioner has got every right and opportunity to prove his case in defence, by way of defence evidence had dismissed the same. The trial Court had also recorded about the conduct of the petitioner in dragging the case, while dismissing the application. As against the order of dismissal, the present revision has been filed.



7. The learned counsel for the petitioner would submit that it is case of the petitioner that a blank cheque was stolen by his room mate one Loganathan and the same was misused by the respondent/complainant. The petitioner did not receive any notice and thereby he was unable to give any reply. The petitioner had filed a petition under Section 91 Cr.PC in CrI.MP.No.1482 of 2021 to summon his banker/The Manager, IndusInd Bank Limited, Anna Nagar Branch, Chennai to call for the account opening form of the petitioner pertaining to his account and to compare the signature found in it as contemporaneous signature documents. Whereas, the learned trial Judge has dismissed the same without affording opportunity to the petitioner. Thereby he would seek to set aside the order.

8. Heard the counsel and perused the materials available on record.

9. The plea of the petitioner is that one Loganathan who was his room mate had taken and misused the cheque and it is further plea that he had not received any legal notice. The trial Court on perusal of the record had found that the complainant had sent a legal notice by registered post and the intimation had been given to the petitioner on 16.08.2012, 17.08.2012, 18.08.2012 and 04.09.2012 and finally it was returned as unclaimed by the petitioner. Thereby, the trial Court had negatived the claim of the petitioner. Further, on perusal of the case bundle, the trial Court had found that the case had been filed in the year 2012 on the file of the Judicial Magistrate No.I, Tiruvannamalai and subsequently, it had been transferred to the trial Court in the year 2013, the petitioner had appeared through his counsel Mr.G.V.Sridharan on 06.02.2013 and subsequently, he had absented himself and NBW was issued against him. Again the accused had appeared through another counsel Mr.V.Siva on 01.12.2016 and thereafter NBW was recalled. Subsequently, the petitioner/accused had not appeared before the Trial Court and the trial Court had issued NBW against him and finally on 18.03.2021, the petitioner had appeared through Mr.P.Arunmohan, Advocate had appeared and recalled the NBW. The trial Court further finding that the petitioner had not filed any contemporaneous signature documents for comparison and finding that the case was pending for the complainant's side evidence, had dismissed the petition. However, despite delaying tactics by the petitioner, the trial Court had benevolently stated that the petitioner has every right and opportunity to prove his case by way of defence. The petitioner without taking advantage of such benoivalence shown by the trial Court has once again



approached this Court with an intention of delaying the case further.

10. This Court does not find any infirmity or illegality in the order passed by the trial Court. The revision petition lacks merits and stands dismissed. The case is of the year 2013, the trial Court shall take every endeavour to dispose of the case as expeditiously as possible. consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate,
Fast Track Court,
Tiruvannamalai.

2.-do-Thro Chief Judicial Magistrate,
Tiruvannamalai.

Copy to: The Section Officer,
Criminal Section,
High Court, Madras.

Cr1.R.C.No.1076 of 2021

GPL(CO)
CB(04/02/2022)