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Crl. R.C.No.393 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.06.2023

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl. R.C.No.393 of 2023

and

Crl.M.P.No.3035 of 2023

V. Kalyankumar

...

Appellant

/vs/

R. Venkatesan

...

Respondent

Prayer : Criminal Revision Case filed under section 397 r/w. 401 of Cr.P.C. to set aside the order dated 07.02.2023 made in CMP No.154 of 2023 in C.C.No.135 of 2021 on the file of the Judicial Magistrate, Fast Track Court (Magisterial Level) Kallakurichi.

For Appellant ... Mr. P. Suresh Babu

For Respondent ... Mr.N. Umapathi

ORDER

This Criminal Revision Case has been filed to set aside the order passed by the learned Judicial Magistrate, Fast Track Court(Magisterial Level) dated 07.02.2023 in CMP No.154 of 2023 in CC.No.135 of 2021.



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2. The learned counsel for the petitioner submitted that the petitioner is an accused and the respondent is the complainant in C.C.No.135 of 2021 on the file of the Judicial Magistrate, Fast Track Court (Magisterial Level), Kallakurichi. The complainant/respondent filed the complaint against the petitioner for an offence under Section 138 of N.I.Act. After examination of the complainant as P.W.1, the petitioner/accused filed an application for forwarding the disputed cheque, dated 04.08.2021 for expert opinion with regard to his signature since the petitioner/accused had disputed his signature in the disputed cheque while issuing reply notice to the respondent/complainant and also during the first questioning, he specifically denied the signature in the disputed cheque. Under these circumstances, the petitioner/accused had filed the application for forwarding the disputed cheque for getting expert opinion with regard to the signature in the cheque, which was dismissed by the Trial Court, by its impugned order, without assigning any valid reason. Challenging the same, the present revision has been filed and sought to allow the revision case and set aside the impugned order.



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3. The learned counsel for the respondent/complainant submitted that the transaction is not denied during the cross examination of the complainant by the accused and further the accused had not offer any explanation for the cheque in the hands of the complainant and further the accused had not filed any corresponding documents to show his previous signature and also have not taken any steps initially. Only after questioning the accused under Section 313 Cr.P.C., without showing any evidence, he filed the petition. There is no merit in the petition and hence, the Trial Court rightly dismissed the petition and there is no reason to interfere with the same. Hence, seeking to dismiss the petition.

4. I have considered the matter in the light of the submissions made by the learned counsel for the petitioner and the respondent.

5. On perusal of the records and the impugned order, the fact reveals that the petitioner is the accused and the respondent is the complainant in C.C.No.135 of 2021. Further it is noted that the complainant filed the complaint against the accused for dishonour of cheque bearing No.577765 dated 04.08.2021 for a sum of Rs.5,00,000/- drawn on Indian Overseas Bank, Pondicherry, which was returned with an endorsement of insufficient



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funds in account. After issuing statutory notice, since the amount remained unpaid, the accused was prosecuted for the offence under Section 138 of N.I. Act. Further the records reveals that the complainant was examined as P.W.1 on 28.10.2022. Subsequently, posted for cross examination on 07.11.2022 and 14.11.2022 , but the accused has not cross examined the complainant. Hence, the Trial Court closed the evidence of P.W.1 without cross examination and posted the case for questioning under Section 313 Cr.P.C. On 24.11.2022. Thereafter, the petitioner had filed a petition under Section 311 Cr.P.C to recall P.W.1 for cross examination, and the same was taken on file in C.M.P.No.3379 of 2022, which was allowed by the Trial Court on 13.12.2022 on cost. Thereafter, the complainant was cross examined by the accused on 24.11.2022 and posted the case for defence evidence on 02.01.2023. At that stage, the accused had filed the present petition under Sections 45 and 73 of Indian Evidence Act r/w.243 of Cr.P.C., to compare the signature in the disputed cheque by expert, which was dismissed by the Trial Court on the ground that during the first questioning, the accused never denied the signature and the cheque.



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6. On perusal of records and copy of the first questioning and answer recorded by the Trial Court, it is not correct as recorded by the Trial Court, the accused denied his signature in the cheque during the initial questioning. Apart from this, it is noticed that the accused had not let any evidence and not offered any explanation as to how the disputed cheque went into the hands of the complainant. Even in the reply notice given by the accused, it is noticed that the accused had not explained how the disputed cheque went into the hands of the complainant. He simply denied the signature in the cheque as well as the issuance of the cheque. Under the circumstances, the burden is upon the accused to explain how the disputed cheque went into the hands of the complainant since the disputed cheque is maintained by the account of the accused. Therefore, at present seeking to forward the disputed cheque to compare the signature for getting expert opinion is not warranted. The accused may let evidence and rebut the presumption raised under Section 139 and 118 N.I. Act. After letting evidence, if needed, the accused may file an application for forwarding the disputed cheque for comparison of the signature in the disputed cheque for getting expert opinion. Therefore, at this stage, I find no merit in the revision and no reason to interfere with the finding in the impugned and the criminal revision case is liable to be dismissed.



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7. Accordingly, the criminal revision case is dismissed. Consequently,
connected miscellaneous petition is closed.

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Index : Yes/No

Internet: Yes/No

mrp

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To

The Judicial Magistrate,
Fast Track Court (Magisterial Level),
Kallakurichi.



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V.SIVAGNANAM, J.

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