



Crl.R.C.No.1285 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

Crl.R.C.No.1285 of 2023 and
Crl.M.P.No.10466 of 2023

K.Kannan

... Petitioner

Vs.

P.Elumalai

... Respondent

Prayer : Criminal Revision filed under Section 397 r/w. 401 of Criminal Procedure Code, to set aside the orders dated 02.06.2023 passed in C.M.P.No.75 of 2023 in S.T.C.No.760 of 2018 by the learned District Munsif cum Judicial Magistrate at Ranipet.

For Petitioner : Mr.T.Surya

ORDER

Challenging the orders, dated 02.06.2023 passed in C.M.P.No.75 of 2023 in S.T.C.No.760 of 2018 by the learned District Munsif cum Judicial Magistrate at Ranipet, the present Criminal Revision is filed.



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2. The revision petitioner filed a petition under Sections 45 and 47 of the Indian Evidence Act in C.M.P.No.75 of 2023 in S.T.C.No.760 of 2018 to send the cheque for comparing the signature and writing on the cheque with his admitted signatures and his writing for an expert opinion.

3. The revision petitioner is an accused in S.T.C.No.760 of 2018. The respondent/complainant filed a petition under Section 200 of Cr.P.C., against the accused for an offence punishable under Section 138 of the Negotiable Instruments Act. The case of the complainant is that the accused borrowed a sum of Rs.1,50,000/- on 16.05.2018 and in order to liquidate the same with interest, he handed over a cheque bearing No.571666 for a sum of Rs.1,59,000/- on 16.08.2018 drawn on State Bank of India, Villivakkam Branch. When the complainant presented the cheque for collection through his banker viz., State Bank of India, Ranipet branch, the same was returned for 'insufficient funds'. Thereafter the complainant issued a notice dated 29.08.2018 to the accused demanding the latter to pay the amount due under the Cheque.



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According to the complainant, though the accused received the said notice as evidenced by the postal acknowledgment (Ex.P6), he did not send any reply and did not also come forward to make good the payment. Therefore he filed a private complaint under Section 200 of Cr.P.C., in S.T.C.No.760 of 2018.

4. On receipt of the said complaint, the learned Judicial Magistrate took cognizance of the offence after observing necessary legal formalities and issued summons for the appearance of the accused. Copies of records were furnished to the accused on his appearance under Section 207 of Cr.P.C., When the accused was questioned with regard to the substance of the accusation made against him in the complaint, he pleaded not guilty and therefore the case was posted for trial.

5. The respondent / complainant examined himself as P.W.1 and marked Ex.P1 to Ex.P6 on his side. The accused cross examined the complainant and thereafter the accused was questioned under Section 313 (i) (b) Cr.P.C. with regard to the incriminating circumstances appearing in evidence against him. He denied of having committed any



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offence. Thereafter, the accused examined himself as D.W.1. However, no documentary evidence was marked on his side.

6. At this stage, the revision petitioner filed the petition C.M.P.No.75 of 2023 under Sections 45 and 47 of the Indian Evidence Act to send the impugned cheque bearing No.571666, dated 16.08.2023 (Ex.P1) to forensic lab for comparing the signature and writing on the cheque for getting an expert's opinion.

7. The learned Judicial Magistrate, dismissed the petition on the following grounds:

- i. the petition is filed at a belated stage, that too after completion of evidence on both sides and when the matter is posted for arguments;
- ii. The accused is thus attempting to protract the proceedings;
- iii. Had it been the case of the petitioner/accused that the cheque Ex.P2 is a forged one, the present application should have been filed at an earlier point of time.

8. Mr.T.Surya, learned counsel for the petitioner drew the



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attention of this Court to the cross examination of P.W.1 wherein P.W.1 had deposed that the accused issued a cheque and a promissory note and that the cheque was filled up subsequently by the complainant and not by the accused.

9. At the outset it may be observed that the signature on the cheque has been admitted by the accused. It is also pertinent to point out that the petitioner accused did not send any reply to the statutory notice issued by the complainant and he has also not suggested to P.W.1 that the signature found in Ex.P2 is not his. The contention of the counsel for the revision petitioner is that the cheque has been issued in favour of another person and the same was filled up by the present complainant. Even assuming that this contention of the accused is true, section 20 of the Negotiable Instruments Act comes into operation, which reads thus:

“20. Inchoate stamped instruments.—Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in 1[India], and either wholly blank or having written thereon an incomplete negotiable instrument, he



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thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount; provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.”

10. Therefore, the learned trial Court Judge is perfectly right in dismissing the petition. Moreover, the accused has to adduce sufficient evidence to rebut the presumption made under Sections 118 and 139 of the Negotiable Instruments Act.

11. Since the case is of the year 2018 and it is posted for arguments, the trial Court viz., the District Munsif cum Judicial Magistrate, Ranipet is directed to proceed with the case and dispose it of on merits and in accordance with law, within a period of one month from



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the date of receipt of a copy of this order.

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12. The Criminal revision is dismissed as devoid of merits.

Consequently, connected miscellaneous petition is closed.

04.08.2023

Index: Yes/No
Speaking/Non-Speaking order
vum

To

The District Munsif cum Judicial Magistrate,
Ranipet.

R. HEMALATHA, J.



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