



Crl.R.C.(MD).Nos.171 and 172 of 2023

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.06.2023

PRONOUNCED ON : 30.06.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

**Crl.R.C.(MD)Nos.171 and 172 of 2023
and
Crl.M.P.(MD)No.2438 of 2023**

Gopalamanikandan

... Revision Petitioner/Petitioner/Accused
in both petitions

Vs.

Natarajan

... Respondent/ Respondent/Complainant
in both petitions

COMMON PRAYER: Criminal Revision Petitions have been filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for records relating to impugned order dated 27.01.2023, passed in Crl.M.P.No.171 of 2023 and Crl.M.P.No.291 of 2023 in S.T.C.No.114 of 2022, on the file of the Judicial Magistrate, Manapparai and set aside the same.



WEB COPY



Crl.R.C.(MD).Nos.171 and 172 of 2023

For Petitioner
in both petitions : Mr.R.Gandhi
Senior Counsel
for Mr.K.S.Kathiravan

For Respondent
in both petitions : Mr.V.Selva Kumar

COMMON ORDER

The Criminal Revision in Crl.R.C.(MD)No.171 of 2023 is directed against the order passed in Cr.M.P.No.171 of 2023 in S.T.C.No.114 of 2022, dated 27.01.2023 on the file of the Judicial Magistrate Court, Manaparai in dismissing the petition filed under Section 45(A) r/w 79(A) of the Information Technology Act 2000.

2. The Criminal Revision in Crl.R.C.(MD)No.172 of 2023 is directed against the order passed in Cr.M.P.No.291 of 2023 in S.T.C.No.114 of 2022, dated 27.01.2023 on the file of the Judicial Magistrate Court, Manaparai in dismissing the petition to re-open the case.



Crl.R.C.(MD).Nos.171 and 172 of 2023

WEB COPY

3. The revision petitioner in both the cases is the sole accused in S.T.C.No. 114 of 2022 on the file of the Court of Judicial Magistrate, Manaparai and is facing charges for the offence under Section 138 r/w 142 of the Negotiable Instruments Act. It is evident from the records that after the closure of the evidence on the side of the complainant as well as the accused and when the case stood posted for arguments, the accused has filed two applications one in Crl.M.P.No.171 of 2023 under Section 45(A) r/w 79(A) of the Information Technology Act 2000 for sending the Compact Disk for voice analysis and to find out the voice in the Compact Disk is that of the complainant and the other in Crl.M.P.No.291 of 2023 for reopening of the case.

4. The case of the respondent/complainant is that the complainant is a reporter in Dinamalar Newspaper and since both the complainant and the accused are residing in the same area, the accused developed friendship with the complainant, that the accused has borrowed a sum of Rs.5,00,000/- on 07.08.2021 at the house of the complainant to meet his immediate unexpected expenses and he had issued a signed cheque dated 22.10.2021, that when the cheque was presented for collection, the same was returned for want of sufficient



Crl.R.C.(MD).Nos.171 and 172 of 2023

funds in the bank account of the accused, that the complainant has sent a legal notice dated 17.11.2021 demanding to pay the cheque amount, that the complainant has also sent a rejoinder on 28.12.2021 to the legal notice dated 17.11.2021 by mentioning the date of borrowal which was inadvertently omitted, that the accused, having received the legal notice, sent a reply notice on 06.12.2021 raising vague allegations and that since the accused has not repaid the amount, the complainant was constrained to file the above private complaint.

5. The case of the petitioner raised in the petitions filed in Crl.M.P.Nos. 171 and 291 of 2023 is that due to the friendly relationship between the accused and the complainant's father, the accused had issued signed blank cheque to the complainant's father and that after the death of the complainant's father, the complainant by utilising the cheque, has filed the above complaint.

6. It is the further case of the revision petitioner that in order to enquire about the liability, the petitioner's brother-in-law, had contacted the complainant through the cell phone and at that time, the complainant had informed that the cheque in dispute was not given to the complainant, but to the complainant's father, that the petitioner has already examined his brother-in-law Murugan as



Crl.R.C.(MD).Nos.171 and 172 of 2023

D.W.1 and he has already deposed about the same and that in order to prove that the voice found in the C.D., is that of the complainant, the same has to be sent to the voice analysis and that for that purpose, the case has to be re-opened.

7. The respondent/complainant has filed counter statements raising serious objections. The learned Judicial Magistrate, after enquiry, has passed separate orders in both the applications on 27.01.2023 dismissing the same. Aggrieved by the dismissal of the said applications, the accused has preferred the present revisions.

8. The learned Counsel for the petitioner would contend that the audio recording between the complainant and the accused's brother-in-law containing the admission of the complainant that the impugned cheque was not issued to him is a relevant piece of evidence in determining the issues involved in the main case and to fix culpability of the parties in a proceedings under Section 138 of the Negotiable Instruments Act, that the onus of proving the genuinenes of the audio recording is vested upon the accused and that only by examination of the voice recorded, by an expert, the genuineness of the said recording can be determined, that the electronic evidence containing the voice record was filed in



Crl.R.C.(MD).Nos.171 and 172 of 2023

WEB COPY

compliance with all the mandates as per the Indian Evidence Act as well as the Information Technology Act and that the learned Judicial Magistrate ought to have permitted the revision petitioner to send the C.D., for voice analysis.

9. The learned Counsel would further submit that though the petitioner has produced the certificate under Section 65-B of the Indian Evidence Act, the learned Magistrate has observed that the petitioner has failed to produce the original cell phone, that they have not furnished any particulars about as to who had downloaded the voice recordings from cell phone to C.D., that the petitioner has not filed the document after complying with the requirements under the Information Technology Act and the Indian Evidence Act and that the petitioner has not proved the ingredients under Section 65-B of the Indian Evidence Act for sending the C.D., for voice analysis and dismissed the petitions.

10. At the outset, it is pertinent to note that the learned Magistrate, after referring to the contentions raised by both the petitioner as well as the respondent and after discussion to some extent, by observing that the petitioner has filed a memo seeking permission to withdraw the above petition, for which



Crl.R.C.(MD).Nos.171 and 172 of 2023

serious objections were raised by the respondent's side, taking note of the objections dismissed the petitions.

11. As rightly pointed out by the learned Counsel for the respondent, though the learned Magistrate has discussed about the merits of the case to some extent, but by recording the memo filed by the petitioner, dismissed the petitions. But the petitioner has preferred the present revisions as if his applications were dismissed on merits.

12. It is pertinent to note that the main contention of the revision petitioner is that the complainant has specifically admitted that the cheque in dispute was not given to him, but only to his deceased father. The revision petitioner through the above applications wanted to prove the above aspect through the cell phone conversation alleged to have been held between his brother-in-law and the complainant. Even according to the revision petitioner/accused, the alleged cell phone conversation was held on 20.11.2021. As already pointed out, the accused, having received the legal notice dated 17.11.2021, sent a reply notice dated 06.12.2021 and more importantly, after the alleged cell phone conversation. Admittedly, the accused has not whispered about the alleged cell



Crl.R.C.(MD).Nos.171 and 172 of 2023

phone conversation in the reply notice. As rightly contended by the learned Counsel for the complainant, when P.W.1 was cross-examined, nothing was asked about the alleged cell phone conversation. The petitioner has not even chosen to play the alleged cell phone conversation now available in the C.D., produced by him before the trial Court, at the time of cross-examining the complainant and not even the complainant was questioned as to whether he is admitting the voice found in the C.D., Assuming for arguments sake, in case if the complainant admitted his voice, then the accused could have very well exhibited the same, but not even a suggestion was made with respect to the alleged cell phone conversation during the cross-examination of the complainant.

13. As rightly pointed out by the learned Counsel for the complainant, for the first time, the accused's brother-in-law in his evidence as D.W.1 has deposed about the conversation alleged to have been held between him and the complainant. Even according to the accused, the alleged conversation was recorded by D.W.1 in the cell phone owned by D.W.1. It is pertinent to note that neither the accused nor D.W.1 has chosen to produce the cell phone at the time of D.W.1's examination. But the learned Counsel for the petitioner would



Crl.R.C.(MD).Nos.171 and 172 of 2023

contend that the petitioner is ready and willing to produce the original cell phone of D.W.1 before the trial Court. Admittedly, neither the accused nor D.W.1 has offered any reason or explanation for non-production of the original cell phone, ie., the primary source before the trial Court.

14. The learned Counsel for the petitioner would contend that the accused has produced the certificate as required under Section 65B of the Indian Evidence Act, but that was not accepted by the learned Magistrate stating that the same is defective. He would contend that the Hon'ble Supreme Court has settled the legal position that even if any defective certificate is produced, the Court instead of rejecting the same, should have given an opportunity to rectify the defects.

15. It is pertinent to note that a Three Judge Bench of the Hon'ble Supreme Court in *Arjun Panditrao Khotkar vs Kailash Kushanrao Gorantyal* reported in *(2020)7 SCC 1*, has specifically held that the required certificate under Section 65B(4) is unnecessary, if the original document itself is produced and in cases where it becomes impossible to physically bring such system or network to the Court, then the only means of providing information contained in such electronic



Crl.R.C.(MD).Nos.171 and 172 of 2023

record can be in accordance with [Section 65B\(1\)](#), together with the requisite certificate under [Section 65B\(4\)](#) of the Indian Evidence Act.

16. In the case on hand, in case of production of the original cell phone itself, the question of producing certificate contemplated under Section 65B(4) will not arise. But since the accused has only produced the C.D., by transferring the date from the cell phone to the C.D., as per the settled legal position, the certificate under Section 65B(4) is mandatory. Recently, the Hon'ble Division Bench of this Court in *Yuvaraj Vs. Additional Superintendent of Police and others* reported in **2023 Live Law Madras 157 (DB)** has specifically held that the owner and the in-charge of the system should be required to give a duly prepared certificate under Section 65B of the Indian Evidence Act, since he is the only authority to give the same, being in charge of system. In the case on hand, D.W.1-brother-in-law of the accused is the owner and is in custody of the original cell phone ie., primary source and for production of the secondary evidence, he has to issue the certificate as required under Section 65B of the Indian Evidence Act. In the case on hand, it is not known as to whether the certificate under Section 65B of the Indian Evidence Act was given by D.W.1 before the trial Court.



Crl.R.C.(MD).Nos.171 and 172 of 2023

WEB COPY

17. Now coming to the main aspect of the case, the petitioner/accused was very well aware of the existence of the alleged cell phone conversation between the complainant and D.W.1 at the time of issuing reply notice and subsequently during the cross-examination of the complainant. As rightly contended by the learned Counsel for the complainant, if the alleged cell phone conversation was available, the petitioner should have cross-examined the complainant with regard to the same and that since the said evidence was neither averred nor utilised, it can easily be inferred that the alleged conversation was not at all available with the petitioner and that the same was created subsequently.

18. As already pointed out, the petitioner has also filed an application to re-open the case and the purpose shown in Cr.M.P.No.171 of 2023 is shown as the reason for reopening the case. One other important aspect to be noted is that admittedly the petitioner/accused is not a ordinary layman, but he is a practicing Advocate before the High Court. Generally, ignorance of law is no excuse, but being an Advocate, he cannot plead the ignorance of law and procedure involved in producing the evidence.



Crl.R.C.(MD).Nos.171 and 172 of 2023

WEB COPY

19. Section 143(3) of the Negotiable Instruments Act contemplates that every trial for the offence under the Negotiable Instruments Act shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint. In the present case, the complaint was filed in December 2021 and the same was taken on file in S.T.C.No.114 of 2022.

20. In the case on hand, as already pointed out, after the conclusion of the evidence on both sides and when the matter was pending for arguments, both petitions came to be filed and the learned Magistrate has rightly observed that the above petitions came to be filed only to protract the proceedings and thereby delay the disposal of the case.

21. Considering the above, this Court has no hesitation to hold that the two petitions in Crl.M.P.Nos.171 and 291 of 2023 are absolute devoid of merits and the same are liable to be dismissed on merits also. Consequently, both the Criminal Revision Cases, which are also devoid of merits, are liable to be dismissed.



Crl.R.C.(MD).Nos.171 and 172 of 2023

WEB COPY

22. In the result, both the Criminal Revision Cases are dismissed. Consequently, the connected Miscellaneous Petition is also dismissed. The learned Judicial Magistrate, Manapparai is directed to dispose of the case in S.T.C.No.114 of 2022 within a period of two months from the date of receipt of a copy of this order.

30.06.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
SSL

To

The Court of the Judicial Magistrate, Manapparai.



WEB COPY



Crl.R.C.(MD).Nos.171 and 172 of 2023

K.MURALI SHANKAR, J.

SSL

Pre-Delivery order made in
Crl.R.C.(MD)Nos.171 and 172 of 2023
and
Crl.M.P.(MD)No.2438 of 2023

30.06.2023