



Crl.R.C.(MD).No.1202 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 31.07.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC(MD)No.1202 of 2022
and
Crl.MP(MD)No.10688 of 2023

Sakthivel

... Petitioner/Petitioner/Accused

Vs.

R.Pattabi Raman

... Respondent/Respondent/Respondent

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to pass and order to allow the above Revision Petition by setting aside the order passed by the Fast Track Court (Magisterial Level), Thoothukudi, Thoothukudi District vide Crl.M.P.No.3570 of 2022 in C.C.No.113 of 2018 dated 10.11.2022 forthwith.

For Petitioner : Mr.J.Sankara Pandian

For Respondent : Mr.P.S.Sundaram

ORDER

The Criminal Revision is filed to set aside the order passed by the Fast Track Court (Magisterial Level), Thoothukudi, Thoothukudi District, in Crl.M.P.No.3570 of 2022 in C.C.No.113 of 2018 dated 10.11.2022.



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2.The petitioner who is the accused in C.C.No.113 of 2018 on the file of the Fast Track Court (Magisterial Level), Thoothukudi, Thoothukudi District, filed this petition challenging the impugned order passed in Crl.M.P.No.3570 of 2022 in C.C.No.113 of 2018 dated 10.11.2022 wherein the petitioner seeks the trial Court to send Ex.P.6 to the hand writing Expert's opinion under Section 45 r/w 286 of Cr.P.C.,

3.According to the petitioner, the respondent alleged that the petitioner issued two cheques for discharging the borrowed amount and the same were marked as Ex.P.6 and Ex.P.7. The said cheques were presented by the respondent in his bank and the same were returned with an endorsement 'no sufficient funds' and 'Signature Differ'. Thereafter, the respondent issued a statutory notice on 28.02.2018 under Section Negotiable Instrument Act. The petitioner after receiving the statutory notice, did not reply to the same. Hence, the respondent/complainant initiated the proceedings under Section 138 Negotiable Instrument Act before the learned trial Judge and the same was taken on file in C.C.No.113 of 2018. After examination of complainant witnesses, case was posted for the defence witnesses. After completing 313 Cr.P.C., questioning, the petitioner filed an application in Crl.M.P.No.3570 of 2022 to send Ex.P.6



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and Ex.P.7 for getting hand writing expert's opinion. That application was dismissed by the learned trial Judge on the ground that when the case was in the stage of defence evidence, the petitioner did not raise any objection regarding the issuance of the cheques by way of reply notice and during the course of the witnesses and the learned trial Judge also gave a finding that there is no contemporaneous document filed along with the petition. Aggrieved over the same, the present revision has been filed by the petitioner.

4. The learned counsel for the petitioner submitted that the cheque (Ex.P.6) and Ex.P.7 which were returned by the bank authorities with an endorsement 'Signature Differ' to be sent to the expert opinion to prove his case. According to the petitioner, he never entered any transaction with the respondent. The finding of the learned trial Judge that the petitioner did not make any reply to the statutory notice is not a ground to dismiss the said application, when the cheque was returning with an endorsement 'Signature Differ' and hence, he prays this Court to adhere the prayer in the Crl.M.P.No. 3570 of 2022.



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5.The learned counsel for the respondent submitted that even though the signatures in the cheques (Ex.P.6 and Ex.P.7) differ, as per the Hon'ble Supreme Court judgment in ***Laxmi Dyechem v. State of Gujarat***, reported in **(2012) 13 SCC 375**, the prosecution under Section 138 r/w 142 is maintainable. Hence, belated the application in Crl.M.P.No.3570 of 2022 in C.C.No.113 of 2018 filed by the petitioner under Section 45 of the Evidence Act r/w Section 286 of Cr.P.C., cannot not be entertained. He further submitted that the application was filed belatedly after completion of 313 Cr.P.C., questioning. There is no good intention and the same was filed only with an intention to prolong the trial pending before the trial Court from 2018 onwards. Hence, he seeks for dismissal of this petition.

6.This Court considering the rival submission of both sides and also perused the records.

7.The submission of the learned counsel for the petitioner that in the interest of justice, even after the completion of 313 Cr.P.C., proceedings, the plea of the petitioner under Section 45 of the Evidence Act r/w Section 286 of Cr.P.C., can also be entertained.



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8.The said submission of the learned counsel for the petitioner cannot be accepted because, the petitioner did not make any reply to the statutory notice sent by the respondent/complainant. Further, during the cross examination of the witnesses, no favourable answer has been obtained.

9.Considering the above, there is no reason to interfere with the impugned order passed by the learned trial Judge.

10.Accordingly, the order passed by the Fast Track Court (Magisterial Level), Thoothukudi, Thoothukudi District, in Crl.M.P.No.3570 of 2022 in C.C.No.113 of 2018 dated 10.11.2022, is hereby confirmed and the Criminal Revision Case is dismissed. Consequently, the connected miscellaneous petition is closed.

31.07.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To

- 1.The Fast Track Court (Magisterial Level), Thoothukudi,
Thoothukudi District.
- 2.The Section Officer,
Criminal Section (Records)
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

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