



Crl.R.C.No.152 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2024

CORAM:

THE HON'BLE MR.JUSTICE **M. NIRMAL KUMAR**

Crl.R.C.No.152 of 2024
and Crl.MP.No.1335 of 2024

B.Mahendran

... Petitioner

Vs.

K.P.Chellamuthu

... Respondent

PRAYER: Criminal Revision is filed under Section 397 & 401 Cr.P.C. to set aside the order dated 06.12.2023 made in Crl.MP.No.1865 of 2023 in STC.No.831 of 2019 on the file of learned Judicial Magistrate, Dharapuram and direct the trial Court to get expert opinion as in the above Crl.MP.No.1865 of 2023.

For Petitioner : Mr.N.Ponraj

For Respondent : Mr.T.Shanmuga Boopathi



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ORDER

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This petition has been filed to set aside the order dated 06.12.2023 made in Crl.MP.No.1865 of 2023 in STC.No.831 of 2019 on the file of learned Judicial Magistrate, Dharapuram and direct the trial Court to get expert opinion.

2. The petitioner is the accused and facing trial for the offence under Section 138 of Negotiable Instruments Act on the complaint of the respondent in STC.No.831 of 2019, wherein the petitioner herein had filed two Crl.MPs. Crl.MP.No.1865 of 2023 was filed under Section 91 Cr.P.C. seeking to summon the account opening Form and admitted cheques signed by him transacted through Bank. Crl.MP.No.1866 of 2023 was filed to forward cheques Exs.P1 to 4 marked in this case along with the summon document to the handwriting expert.

3. The contention of the petitioner is that right from the beginning, he had disputed his signature in the cheques. Even in the reply notice dated 11.07.2019, Ex.A11, he specifically denied the issuance of four cheques to



the respondent, however, the respondent had misused the cheques of the petitioner by signing himself and presented the same before the Bank.

Further, the petitioner had examined himself as DW1 and reiterated the same in his evidence. The Trial Court despite the same, dismissed the petition for the reason that the petitions have been filed belatedly.

4. The learned counsel for the petitioner submitted that in this case, on chief examination of PW1, proof affidavit was recorded on 03.03.2023 and cross-examination of PW1 was done on 13.10.2023 and 17.10.2023. Immediately, the petitioner filed the above 2 miscellaneous petitions on 17.11.2023. Therefore, there is no delay on the part of the petitioner in filing those petitions.

5. In support of his contentions, the learned counsel for the petitioner relied upon the judgment of the Supreme Court in ***Kalyani Baskar vs. M.S.Sampoornam*** reported in 2007 2 SCC 258.

6. The learned counsel for the respondent by filing counter affidavit



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submitted that it was the claim of the petitioner that his 4 cheques were lost, which have been misused by the respondent. However, in his reply, there is no reference to any police complaint immediately about the missing of cheques and misuse of cheques by the respondent. This defence is taken only to further protract the trial. The case is of the year 2019 and it is pending till date. The trial Court had rightly dismissed both the petitions and hence, no interference is needed and the revision petition may be dismissed.

7. Considering the above submissions and the materials placed on record, it is seen that the petitioner had challenged only summoning order of dismissal filed under 94 Cr.P.C. instead of the petition for sending the cheques to the handwriting expert. However, the learned counsel for the petitioner now submitted that since it is a common order, he had not separately challenged Crl.MP.No.1866 of 2021.

8. In view of the above, this Court finds no reason to interfere with the order passed by the Trial Court. Accordingly, this Criminal Revision



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Case is dismissed.

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9. However, this Court leaves it open to the discretion of the Trial Court to invoke Section 73 of the evidence Act if required. Thereafter, if required Section 45 of the evidence Act can be invoked. Further, it is seen that the case is pending from the year 2019, hence, the Trial Court is directed to conclude the trial within a period of two months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

13.03.2024

Speaking order/Non-speaking order

Index: Yes/No

Neutral Citation: Yes/No

pvs

To

1. The Judicial Magistrate,
Dharapuram
2. The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

pvs

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