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CrI.A.No.109 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.A.No.109 of 2022

R.Jayaraman

... Appellant

Vs.

V.Vijayargavan

... Respondent

PRAYER: Criminal Appeal is filed under Section 378(4) of the Code of Criminal Procedure, to set aside the order dated 05.11.2019 in C.C.No.650 of 2018 on the file of the learned Judicial Magistrate, Fast Track Court No.1 @ ML, Coimbatore.

For Petitioner : Mr.P.Saravana Sowmiyan

For Respondent : Mr.R.S.Diwaagar

ORDER

The appellant/complainant, who filed a petition under Section 138 of the Negotiable Instruments Act against the respondent in C.C.No.650 of 2018, before the learned Judicial Magistrate, Fast Track Court No.1 @ ML, Coimbatore, has filed the above appeal after the dismissal of his complaint.



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2. The appellant's contention is that the trial court failed to consider that the appellant was seeking adjournment only due to a bona fide reason. Hence, he had filed a petition under Section 309 Cr.P.C., seeking adjournment before the trial Court on the ground that the original cheque bearing No.583003 dated 29.05.2018 for Rs.17,00,000/- drawn on IndusInd bank, Coimbatore, had been misplaced.

3. The learned counsel appearing for the appellant submitted that the petition was filed under Section 138 of the N.I.Act on 01.10.2018 before the trial court, and the cheque was produced by filing the complaint. The sworn statement of the petitioner was recorded on 09.10.2018. At that time, the cheque was again produced and taken on file in C.C.No.650 of 2018. The same was recorded in the sworn statement. Thereafter, on 09.10.2018, the cheque was returned to the petitioner for safe custody and to produce the same during the trial.

4. While taking the complaint on 22.12.2021 before the this Court, in the complaint, the petitioner had averred that the cheque bearing No.583003 dated 29.05.2018 for Rs.17,00,000/- had been presented by the



petitioner in Vijaya bank for collection on 16.07.2018, and he also recorded that the cheque was not honoured by the defendant's bankers, IndusInd. This complaint was signed by the petitioner on 25.07.2018 and presented on 27.07.2018. However, in the complaint under Section 138, the cheque return memo dated 02.08.2018 was mentioned.

5. The respondent disputes the issuance of the cheque and claims that the respondent is liable to pay the cheque amount. The respondent has also lodged a complaint with the Inspector of Police, Peelamedu Police Station, Coimbatore, stating that at the time of issuance of the alleged cheque, he was not in India, but abroad, and the cheque had been misused. Hence, to avoid facing perjury charges, the petitioner claims that the cheque has been lost.

6. Pursuant to the complaint and FIR in Crime No.627 of 2019, the petitioner appeared before the Inspector of Police, Peelamedu Police Station on 20.10.2019 and gave an explanation, stating that he needed the cheque for another case. Thus, the petitioner has taken contradictory stands,



committing perjury on each occasion and failed to produce the cheque fearing exposure of falsehood.

7. This Court had called for the original records from the trial court and perused the same. On perusal of the trial court records, it is not in dispute that the petitioner filed a complaint before the trial court, namely Judicial Magistrate, FTC-I, Coimbatore on 01.10.2018, and on 09.10.2018, sworn statement recorded. The case was taken on file in C.C.No.650 of 2018. The trial court had occasion to peruse the original cheque on date of filing and on 09.10.2018, during recording of the sworn statement, and there is an endorsement that the original cheque returned to the petitioner.

8. Now, the cheque found to be misplaced, untraceable, and hence, the petitioner unable to produce the same and letter, the impugned order came to be passed. The contention of the respondent regarding the reference made in O.S.No.396 of 2018 that the cheque was not honoured on 25.07.2018, much before the bank return memo dated 02.08.2018 would amount to perjury cannot be accepted.

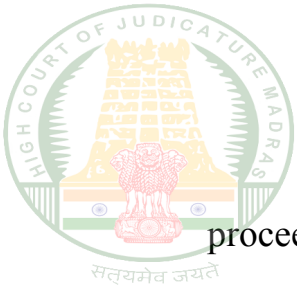


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9. There is a dispute regarding manner by which the cheque was issued, which are facts to be considered during the trial. The respondent defence, cannot be considered at this stage. The only issue now is that the petitioner whether misplaced the original cheque. The petitioner produced the cheque earlier is recorded, hence the trial Court to receive the photocopy of the cheque from the petitioner, and the same shall be marked as an exhibit during the trial. There cannot be any dispute with regard to its authenticity and admissibility. It is open for the respondent to take all defences, which are now raised, before the trial court.

10. With the above observation, this ***Criminal Appeal is disposed of.*** The respondent had filed a quash petition before this Court in Crl.O.P.No.14373 of 2019, and this Court vide order dated 07.06.2019 had directed to conclude the trial within a period of three months.

11. In view of the above, this Court directs the trial Court to



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proceed with the trial preferably on day-to-day basis and complete the trial

within a period of three months.

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Speaking order/Non-speaking order

Index: Yes/No

Neutral Citation: Yes/No

To

The Judicial Magistrate, Fast Track CourtNo.1 @ ML, Coimbatore.



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M.NIRMAL KUMAR, J.

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