

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.03.2012

Coram

THE HON'BLE MR.JUSTICE C.S.KARNAN

Crl.R.C.No.121 of 2012

and

M.P.No.1 of 2012

R.Sivasankaran ... Petitioner / Accused

Vs.

M.Sakthivel ... Respondent/ Complainant

Prayer :- Criminal Revision is filed under Section 397 r/w 401 of Cr.P.C., against the order passed by the Judicial Magistrate No.II, (FTC.No.II) Erode, in Crl.M.P.No.1631 of 2011 in S.T.C.No.60 of 2011, dated 15.12.2011.

For Petitioner : Mr.V.S.Kesavan

For Respondent : Mr.E.N.Sivasenapathy

ORDER

The petitioner / accused has preferred the present revision against the order passed in Crl.M.P.No.1631 of 2011 in S.T.C.No.60 of 2011, dated 15.12.2011, on the file of Judicial Magistrate, Fast Track Court No.II, Erode.

2. The brief facts of the case are as follows:-

The respondent herein / complainant has filed a petition in S.T.C.No.60 of 2011, on the file of Judicial Magistrate, Fast Track Court No.II, Erode, against the revision petitioner herein / accused, stating that the accused had issued cheque dated 14.07.2010 for a sum of Rs.2,00,000/-, in order to discharge his legal liability. The same was dishonoured on presentation in his account. Hence, the said case has been filed.

3.Under the circumstances, the accused has filed C.M.P.No.1631 of 2011 in S.T.C.No.60 of 2011, under Section 45 of Indian Evidence Act, to send the cheque for getting expert opinion from the Forensic

Department in order to determine the veracity of the date, name and cheque amount written in the blank cheque. The said petition has been resisted by the complainant, who had filed a counter statement. The trial Court, after hearing the arguments of the highly competent counsel on either side and on perusing the petition and counter statements dismissed the said application. The trial Court had observed that the main case was posted for defence evidence and that at that stage, the said application had been filed. Further, the accused himself had admitted that he had signed the said cheque.

4. Aggrieved by the said dismissal order, the revision has been filed. The very competent counsel Mr.V.S.Kesavan submits that the accused had issued a blank signed cheque and it has been used by the complainant for his own convenience and the amount has been filled by him. The signature in the cheque had been written in one ink and the date, amount and name of the account holder had been filled in another ink and therefore the genuineness of the cheque has to be determined after getting expert opinion from the Forensic Department. This is one of the main issue regarding the issuance of cheque for legal liability.

5. The highly competent counsel Mr.E.N.Sivasenapathy for the complainant submits that the cheque had been issued on 14.07.2010, for a sum of Rs.2,00,000/-, to and in favour of the complainant and when the same was presented in his account, it was dishonoured. Subsequently, legal notice has been issued on 29.07.2010 and the same has been received by the accused on 30.07.2010. Thereafter, the case has been filed under Section 138 of Negotiable Instruments Act, after observing all legal formalities. Now, the complainant had entered into witness box and tendered his evidence. After completing his evidence, the matter has been posted for defence side evidence. At this stage, the accused has filed the sub-application in C.M.P.No.1631 of 2011, for expert opinion which can only be termed as an after thought in order to delay the proceedings in the main case. Further, the accused had openly admitted that he had signed the cheque. Even after receipt of legal notice, the accused had remained continuously silent. For deciding the main case, only limited issues have been involved namely issuance of cheque, signature, dishonour of cheque and legal liability. As such, the dismissal of the miscellaneous petition is appropriate.

6. On considering the facts and circumstances of the case and arguments advanced by the learned counsel on either side and on perusing the impugned order of the trial Court, this Court does not find any shortcomings in the conclusions arrived at for dismissing the petition. Further, this Court is of the view that the complainant had issued legal notice on 29.07.2010. Even after receipt of the notice, the accused had not sent his reply and failed to disclose his contentions regarding quality of ink used in affixing the name, amount and date found in the cheque. As such, the order of the trial Court is appropriate and is therefore

confirmed. This Court directs the trial Court to dispose the main case on top most priority basis.

7.In the result, the above revision is dismissed. Consequently, the order passed in Crl.M.P.No.1631 of 2011 in S.T.C.No.60 of 2011, dated 15.12.2011, on the file of Judicial Magistrate, Fast Track Court No.II, Erode, is confirmed. Consequently, connected miscellaneous petition is closed. Accordingly ordered.

Sd/-

Asst.Registrar (CSII)

Dated: 9.6.2014

/true copy/

Sub Asst. Registrar

vs

To

1. The Judicial Magistrate No.II,
Fast Track Court No.II,
Erode.
2. do thro the Chief Judicial Magistrate
Erode

1 cc to Mr.E.N.Sivasenapathy, Advocate, sr. 21828

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and
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RJ (CO)
kk 9/6

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