

Rajendran Vs. Bensam Robinson

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Court : Chennai

Decided On : Feb-19-2007

Reported in : 2007(211)ELT368(Mad)

Judge : P.R. Shivakumar, J.

Acts : Negotiable Instruments Act - Sections 138

Appeal No. : CrI.R.C.(MD). No. 20 of 2007 and M.P.(MD). No. 1 of 2007

Appellant : Rajendran

Respondent : Bensam Robinson

Advocate for Def. : T. Arul, Adv.

Advocate for Pet/Ap. : C. Mayilvahana Ranjendran, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

P.R. Shivakumar, J.

1. This Criminal Revision case is directed against the order passed by the learned District Munsif -cum- Judicial Magistrate, Eraniel in CrI.M.P. No. 9065 of 2006 in S.T.C. No. 58 of 1999. By the impugned order, the learned Judicial Magistrate,

Eraniel has dismissed the application seeking a reference of Ex.D.1 receipt to the Handwriting Expert.

2. The facts leading to the filing of the criminal revision case can be summarised as follows:

The respondent herein preferred two private complaints for an offence under Section 138 of the Negotiable Instruments Act based on two dishonoured cheques allegedly issued by the petitioner herein on 30.05.1998 and 25.01.1999 for the sums of Rs. 60,400/- and Rs. 90,000/- respectively. The said private complaints have been taken on file by the learned District Munsif -cum- Judicial Magistrate, Eraniel as S.T.C. Nos. 58 and 1509 of 1999 respectively. The respondent herein/complainant in the above said cases is contesting the above said cases, after entering appearance in person and through counsel. The trial in the above said cases is almost over. On the side of the respondent/complainant in the above said case, he himself has been examined as P.W.1. Three witnesses have been examined on the side of the accused (the petitioner in the revision case) including himself. After the examination of three witnesses on the side of the accused (the petitioner in the revision case), the accused seems to have filed the above said petition, viz., CrI.M.P. No. 9065 of 2006 on the file of the trial Court, praying that the document marked as Ex.D.1 on the side of the accused should be referred to a Handwriting Expert to find out, whether the signature found in the said document is that of the complainant or not?. The said petition was resisted by the respondent herein/complainant stating that the filing of the petition was nothing but an attempt to protract the case.

3. After according due consideration to the submissions made on both sides, the learned District Munsif -cum- Judicial Magistrate, Eraniel observed that the receipt marked as Ex.D.1 might not be relevant and hence, would not help the petitioner herein/accused in establishing his defence in the cheque bounce case. The learned District Munsif -cum- Judicial Magistrate also observed that the proof of the signature found in the above said document would no way help the petitioner herein/accused in his defence in the private complaint for the offence under Section 138 of the Negotiable Instruments Act. Pointing out the fact that, according

to the case of the petitioner herein/accused, the said receipt was issued in respect of a different transaction, namely, a chit transaction that the petitioner herein/accused did not state anything regarding the said receipt in his reply notice for the statutory notice issued prior to the filing of the private complaints and that nothing was mentioned in the reply notice regarding the chit transaction, and also the fact that the petitioner herein/accused chose to file the above said petition, after a direction was issued by this Court for the disposal of the cases (S.T.C. Nos. 58 and 1509 of 1999) within two months from the date of its order, the learned District Munsif -cum- Judicial Magistrate observed that the same was nothing but an attempt to protract the proceedings and hence dismissed the same.

4. Questioning the legality and correctness of the above said order dated 06.12.2006 passed by the learned District Munsif -cum- Judicial Magistrate, Eraniel in CrI.M.P. No. 9065 of 2006, the petitioner/ accused has filed this criminal revision case.

5. The arguments advanced by Mr. C. Mayilvahana Ranjendran, learned Counsel appearing for the petitioner and also by Mr. T. Arul, learned Counsel appearing for the respondent have been heard and the documents produced in the form of typed-sets including the copy of the impugned order have been perused.

6. The learned Counsel for the petitioner/accused put forth a vehement argument that a person accused of an offence should be given every chance to prove his innocence and the order of the trial Court dismissing the application seeking a reference of the disputed document for the opinion of a handwriting expert is nothing but denial of such a reasonable opportunity for the petitioner to prove his innocence. No doubt that a person accused of an offence should be given every chance of proving his innocence. But at the same time, the accused should not be allowed to misuse the process by adopting a method to protract the case as long as possible.

7. The learned Counsel for the respondent has rightly contended that the facts and circumstances of the case will show that the case of the petitioner in the present revision case is one such attempt aimed at protracting the case. The petitioner herein/accused has not only failed to plead in his reply notice that the cheques

were issued in connection with a chit transaction but also chose to make periodical payments, after entering appearance in the criminal case registered based on the private complaint of the respondent herein. A total amount of Rs. 17,000/- was paid by the petitioner herein, after he entered appearance in the above said criminal case S.T.C. No. 58 of 1999. The said amount was paid in piecemeal on 11 occasions. The said payment made by the petitioner herein/accused are evidenced by the memo submitted on each occasion, the copies of which have been enclosed in the typed-set filed by the respondent herein. Thereafter, since no further payment was made and progress of the case was also hindered, the respondent herein moved two petitions in CrI.O.P. Nos. 5785 and 5786 of 2006 on the file of this Court for a direction to the Judicial Magistrate, Eraniel to dispose of S.T.C. Nos. 58 and 1509 of 1999 expeditiously. This Court, after hearing both sides, on 24.08.2006 passed an order directing the Judicial Magistrate, Eraniel to dispose of the said cases within a period of two months from the date of receipt of a copy of the said order. In spite of the fact that such a direction had been given by this Court, in order to get over the same and to protract the trial of the case, the petitioner herein/accused seems to have filed the petition for referring the document to a handwriting expert.

8. Referring to a handwriting expert is not the only way of proving a document. There are also other ways and means of proving the document. In *State of Himachal Pradesh v. Jai Lal* 1999(8) Supreme 401, the Apex Court has observed that an expert is not a witness of fact and his evidence is really of an advisory character. Even the opinion of the handwriting expert will only provide a guidance for the Court to take a correct decision. It shall have a persuasive effect and will not be of binding nature. In the presence of the opinion of a handwriting expert, the Court has to make a comparison of the disputed and admitted signatures, with the help of the salient features pointed out by the handwriting expert, and come to an independent conclusion. As such, this Court is not in a position to reject the contention of the learned Counsel for the respondent/complainant that the very purpose of filing the petition for referring the document to a handwriting expert is to protract the case. The case is of the year 1999. After eight long years, the petitioner has come forward with such a plea. The facts: that the petitioner/accused has come forward with such a petition belatedly; that such

stand was not taken in the reply statement sent by the petitioner/accused and that the petition was filed only after the receipt of the order of this Court, containing a direction to the Judicial Magistrate to dispose of the case within two months - will amplify the object sought to be achieved by the petitioner, namely, protraction of the case. Therefore, this Court sees no error or infirmity in the order passed by the learned District Munsif -cum-Judicial Magistrate, Eraniel in dismissing Crl.M.P. No. 9065 of 2006 and comes to a conclusion that there is no scope for interference with the same in exercise of the revisional powers of this Court.

9. For all the reasons stated above, the Criminal Revision Case fails and the same deserves to be dismissed.

10. In the result, this Criminal Revision Case is dismissed. Consequently, connected M.P. No. 1 of 2007 is also dismissed.

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