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Crl.O.P.No.22866 of 2023
& Crl.M.P.No.16014 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.10.2023

Pronounced on : 17.10.2023

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.22866 of 2023
& Crl.M.P.No.16014 of 2023

M.Arul Kumar,

.. Petitioner/Accused

/versus/

P.Shanmugam,

... Respondent/Complainant

Prayer:- Criminal Original Petition has been filed under Section 482 of Cr.P.C., pleaded to call for the records in C.M.P.No.3884 of 2023 in STC.NO.200 of 2021 on the file of the Judicial Magistrate, Fast Track Court – I, Erode, dated 05.07.2023 and set aside the same.

For Petitioner : Ms.N.Nathami



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ORDER

The petitioner herein is the accused in STC.No.200 of 2021 on the file of Judicial Magistrate, Fast Track Court-I, Erode. This case arises from a private complaint filed under Section 138 of Negotiable Instrument Act.

2. The substance of the complaint is that, the accused/petitioner borrowed loan of Rs.1,50,000/- from the complainant and on the same day gave a post dated cheque. The cheque was presented for collection but returned with endorsement “insufficient fund”. The defence of the accused/petitioner is that, the subject cheque was not given to the complainant to discharge any existing debt payable to the complainant. The cheque was given as security to one Vela Finance in the year 2018 when the accused borrowed a sum of Rs.1,00,000/-. The said loan was paid in entirety with interest. However, the Vela Finance informed additional interest of Rs.7000/- to be paid and refused to give back the cheque. Vela Finance in collusion with the complainant had misused the cheque given as security and had laid the private complaint.



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3. After the completion of examination of witnesses on either side, a petition under section 311 Cr.P.C filed to recall DW-1 and permit to mark additional 4 documents filed by the petitioner herein. The said petition was dismissed by the trial Court assigning reasons. The order of the Judicial Magistrate - I, Erode is challenged in this Criminal Original Petition filed under Section 482 Cr.P.C.

4. From the records it is found that, the trial has commenced and the complainant examined as P.W-1. In the course of evidence, the complainant had deposed that, the subject cheque was given to him by the accused at his residence as security on 05/03/2021 at 9.00 a.m. The cheques was given with post dated (05/04/2021), after receiving Rs.1,50,000/- in cash from him with promise to repay with 18% interest. To disprove this accusation, the accused wanted to establish that, he was not at the residence of the complainant on the said date and time. He wants to show *alibi*. Hence, he earlier filed a Miscellaneous Petition to examine Advocate Vijayakumar of Salem and the owner of Thirumal Cycle Stand, where he used to park his two wheeler. The trial Court dismissed his petition as bereft of details to summon them. The Revision Petition preferred before the II Additional District and



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Sessions Judge, Erode also dismissed.

5. In the meanwhile, the examination of witnesses on either side had come to end. Thereafter, the petitioner herein had filed a petition to reopen, recall D.W-1 and receive additional documents namely photos and videos recorded by him from the original documents in his Redmi – 6 mobile phone and the timeline generated from his mobile phone App and the statement of account for payment of EMI for the Redmi – 6 mobile with the screen shot of the account with Section 65-B Indian Evidence Act certificate.

6. More precisely, the examination of complainant side witnesses completed on 13/12/2023. Thereafter, the accused/Petitioner filed a petition to examine him as defence witness. Same was allowed and the accused/petitioner was examined in chief as DW-1 on 19/04/2023. Ex.D-1 to Ex.D-7 were marked and he was also cross examined. For further defence witnesses, the trial of the case was adjourned to 08/05/2023. At that juncture, the accused had moved this petition to recall and receive additional documents. The documents sought to be marked and the reasons are:-



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1. மனுதாரர்/எதிரி தன்னுடைய இரு சக்கர வாகனமான Unicorn bike No.TN-33-BM-8877 வண்டியை திருமால் சைக்கிள் stand ல் இருந்து எடுத்துக் கொண்டு அந்த வண்டியின் மூலம் சேலம் அஸ்தம்பட்டியிலுள்ள சீனியர் Advocate விஜயக்குமார் அலுவலகத்திற்கு சென்று அவரது அலுவல்களை கவனித்து வருவார். பின்னர் சேலம் மாவட்ட நீதிமன்றத்திற்கு சென்று வழக்குகளை எனது சீனியர் உடன் இருந்து சந்திப்பார். ஒவ்வொரு முறையும் வண்டியை எடுக்கும் போது அங்கே வைக்கப்பட்டிருக்கும் Register ல் கையெழுத்து போட்டுத்தான் வண்டியை எடுப்பார். கையெழுத்துப் போட்டுத்தான் வண்டியை விடுவார். பின்னர் இரவு 7.30 மணிக்கு சேலத்திலிருந்து ரயில் மூலம் ஈரோட்டிற்கு வருவது வாடிக்கையாகும். அந்த திருமால் கைக்கிள் ஸ்டேன்டில் பதியப்பட்டிருக்கும் Register ஐ எனது redmi 6 என்ற மொபைல் மூலம் photo மற்றும் video எடுத்து அதை பிரதியாகப் போட்டுள்ளார் 05 – B certificate உடன் சேர்த்தும்.

2. மனுதாரர்/எதிரி தனது கைபேசியில் GPS மூலம் தானாகவே இயங்கும் Time Line ல் தான் எங்கெங்கு சென்றேன் என்ற விபரம் தானாகவே பதியப்பட்டுள்ளது அதன் ஆவணங்களை தாக்கல் செய்கிறேன். 01.03.2021 தேதி முதல் 05.03.2021 – ம் தேதி வரையிலும் பின்னர் 12.03.2021 ன் தேதிய Time Line ல் பதிவிரக்கம் செய்யப்பட்ட பட்டியலில் உள்ள ஆவணங்களை தாக்கல் செய்கிறேன். நான் தாக்கல் செய்யும் கீழ்க்கண்ட பட்டியலில் உள்ள ஆவணங்களை REDMI



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என்ற நிறுவனத்தை சேர்ந்த REDMI – 6 என்ற மாடல் MEI No.1861743046355270 & No-(2):861743046355288 என்ற எண் கொண்ட எனது கைப்பேசியிலிருந்து 08.02.2023 ம் தேதியன்று மதியம் சுமார் 4.00 மணி முதல் இரவு 09.00 மணி வரை Time Line என்ற Automatic செயலியிலிருந்து Screen Shot செய்தும் & Download செய்து பிரிண்ட் எடுக்கப்பட்டது ஆகும். Computer மூலம் Extract செய்து அதை Pendrive லும் போட்டுள்ளார் 65 – B certificate உடன் எனது original mobile தேவைப்பட்டாலும் சமர்ப்பிக்கிறேன்.

3. Bajaj Finance மூலம் 2017 ஆம் ஆண்டு எடுக்கப்பட்ட Samsung J7 என்ற மொபைல் மனுதாரர்/எதிரியின் credit card மூலம் வாங்கி சண்முகம் என்பவர் EMI கட்டினார். அதன் EMI மாதா மாதம் ரூ.1,750/- ஆகும். மொத்த தவணை 10 மாதம். முன்பணம் செலுத்தியது போக மீதித்தவணை 7 மாதம் கட்டி முடிக்கப்பட்டதன் statement of accounts online copy அதனுடன் சமர்ப்பிக்கிறேன். அதன் screen shot 65 – B certificate உடனும்.

4. எனது remi-6 mobile-ல் reliance sim mobile No.9080403552 பயன்படுத்துகிறேன். அதில் கடந்த 20.02.2021 முதல் 20.03.2021 வரை பேசப்பட்ட மற்றும் அழைக்கப்பட்ட prepaid phone bill ஏற்கனவே சமர்ப்பிக்கப்பட்டுள்ளது அதன் PDF file இத்துடன் இணைக்கப்படுகிறது, மொத்தம் 13



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பக்கங்கள். 65 – B certificate உடனும்.

7. The case of the petitioner is that, at the relevant point of time, he used to travel from Erode to Salem in the Coimbatore intercity train daily using season ticket to attend the office of Advocate Vijaykumar under whom he was working as a Junior Advocate. He used to keep his two wheeler (TN-33-BM 8877) in the Thirumal Cycle Stand parking lot, Salem. After reaching Salem, he used to take the two wheeler from the parking lot and reach his Senior Office at Hastampatti, Salem. While parking and taking the two wheeler, he used to sign the register maintained at Thirumal Cycle Stand. Daily, he used to board the train from Erode at 7.45 am and reach Salem junction at 8.45 am. From Salem Railway Station, will go to the office in his two wheeler and reach the office at about 10.00 a.m and again return to Erode from Salem at 7.00 pm.

8. In the Redmi -6 mobile phone which he purchased in the name of his friend Shanmugam on loan from Bajaj Finance in the year 2017, the locations are recorded in the time line app and the call details are available. He had taken photo and video of those details in PDF format and video. These documents which are now in his mobile phone are electronic evidence as per



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section 65-B of Evidence Act. So, he as the custodian of the documents ready to file affidavit under Section 65-B of Indian Evidence Act. Therefore, the petition to recall, reopen and mark additional documents has to be allowed.

9. The Trial Court below had rightly dismissed his petition with appropriate legal reasoning. This Criminal Original Petition is filed challenging the judicial order under Section 482 of Cr.P.C.

10. It is a clear misadventure of the petitioner herein to convert a physical document maintained and under the custody of third party into an electronic document using a mobile phone and mislead the Court to admit it as an electronic evidence under his custody, hence admissible under Section 65 B of the Indian Evidence Act.

11. For easy reference, Section 65 B of Indian Evidence Act is reproduced below:-

65-B. Admissibility of electronic records.—(1)

Notwithstanding anything contained in this Act, any



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information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely—

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in



respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period;

or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section



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as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,—

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,—



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(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

12. This provision pertains to admitting a secondary evidence of primary evidence maintained in electronic form fed and stored in a computer.

The basic requirement to rely on this section are:-

First, the information or document sought to be admitted in



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evidence must have been initially stored in a computer used regularly for the purposes of any activities regularly carried on over a period of time by a person.

Secondly, that person having lawful custody can take a print out of that information or document on a paper or store or record or copy that primary document in any other device and produce it as a document.

Thirdly, such document if produced with the certificate satisfies the requirements/conditions mentioned in this section, is admissible in evidence as if it is a direct evidence, without production of the original.

13. As far as facts of the case in hand, the entries made in the register maintained by the Thirumal Cycle Stand is in physical form. The custodian is the owner of the cycle stand. Therefore, the entries in that register can be proved only by producing the registers by the person, who is having custody or control of the register. Taking photos of the register in mobile phone and trying to introduce it as an electronic evidence is legally not permissible.



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14. Likewise, the Time Line App downloaded in a mobile phone at the most can only indicate where the SIM Card inserted in the mobile phone located/moved. The details in fact are in respect of the movement of an inanimate thing and not in respect of the movement of a animate thing. Any one can carry the mobile phone and move the device. It is not an evidence to prove that the owner of the phone or the SIM card holder carried that mobile and moved. Time line App information at the most can provide the location of SIM card but not the location of a person in whose name the phone purchased and/or the SIM card stands. The Timeline App details is not a proof of location of a person but only proof of location of the device. The Timeline App details are also amenable to manipulation. Hence, the screen shot of Timeline App details are not admissible in evidence.

15. Similarly, the statement of account for repayment of EMI for the loan availed to buy Redmi 6 mobile phone and the phone call details are of no use in this case without establishing the fact that the phone purchased by the accused or it was used by the accused or the information found were fed by him in the regular course of business. A screen shot or downloaded PDF statements found in a mobile phone cannot be construed as information in electronic form



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stored by a person in his regular course of business. What the petitioner claims as electronic evidence are screen shots he took from some document which are in physical form. In other words, they are not information stored in electronic form by the custodian of the information or document in the regular course of activities and copied by the custodian but they are photos taken by the accused in his mobile phone from the primary document namely statement of account and registers which are in physical form converted into electronic form and maintained by a third party, either by stealth or with permission the photo or screen shot taken from a document in physical form is not a secondary evidence of a primary electronic document. For admitting a secondary evidence, the person who seeks to introduce secondary evidence has to satisfy the conditions laid in Section 65 of Evidence Act. A third party, by converting a primary evidence which is in physical form into an electronic document cannot be termed that document as an electronic evidence to get substituted to the primary document. Section 65-B of the Evidence Act comes into operation only if the primary evidence itself is in electronic form or stored in the computer from physical form in the regular course of business. If the custodian of the primary evidence wants to take a print out of it on a paper or record it in any other device in electronic form and place before the court such documents alone can



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be admitted by the Court, provided, the custodian of the document under whose control the device is certify about the nature of feeding/maintaining the record in the said device.

16. The 4 documents sought to be introduced by the petitioner through D.W-1 does not satisfy the conditions mentioned in Section 65-B of Indian Evidence Act. Hence, the trial Court has rightly dismissed the petition as devoid of merit.

17. As a result, this ***Criminal Original Petition is dismissed.***
Consequently, connected Miscellaneous Petition is closed.

17.10.2023

Index:yes
Speaking order/non speaking order
bsm

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1. The Judicial Magistrate, Fast Track Court – I, Erode,



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Dr.G.JAYACHANDRAN, J.

bsm

**Pre-delivery order made in
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