IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.06.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Crl.O.P.No.11750 of 2012
&
MP.NO.1/2012

K.Aboobacker .. Petitioner/Accused

Vs

M/s.Arjun Amaravathi Chits Funds Private Limited,
rep. by its power of attorney V.B.Mani,
Having office at No.190, Kutcherry Road,
Mylapore, Chennai-600 004. .. Respondent/Complainant

PRAYER: Petition under Section 482 of the Code of Criminal Procedure seeking

i.to clarify the order of this court dated 14/02/2012 in Crl.Op.No.1641 of 2012 whether any delay is arrived if Criminal Revision Petition file as per direction.

ii.to direct the Lower Appellate court(Principal District and Sessions Judge at Chennai -600 104) to consider the order of this court in Crl.Op.No.1641/2012 dated 14/02/2012 and to direct the lower Appellate court to number the Criminal Revision Petition filed by the Petitioner in SR.NO.4483 of 2012.

For Petitioner : Mr.A.Ramaswamy

For Respondent : No Appearance

ORDER

This Criminal Original Petition has been filed by the petitioner seeking to clarify the order dated 14.02.2012 passed in Crl.O.P.No.1641 of 2012 and to direct the Principal District and Sessions Judge, Chennai to number the Criminal Revision Petition filed by the petitioner in S.R.No.4483 of 2012.

2. I heard Mr.A.Ramaswamy, learned counsel for the petitioner. Perused the materials available on record. No representation on behalf of the respondent.

3. The respondent herein filed C.C.No.1116 of 2004 against the petitioner under Section 138 of the Negotiable Instruments Act and the same is pending for arguments. Pending C.C.No.1116 of 2004, the petitioner has filed Crl.M.P.No.964 of 2011 under Section 311 Cr.P.C. seeking permission to examine the Branch Manager, Indian Bank, Chinthadripet Branch, Chennai and the Registrar of Chits, Mylapore, Chennai as defence side witnesses and the same was partly allowed by the learned XVIII Metropolitan Magistrate, Saidapet, Chennai by an order dated 25.4.2011. Aggrieved by the same, the petitioner preferred Crl.O.P.No.1641 of 2012 before this Court. By an order dated 14.2.2012, this Court dismissed Crl.O.P.No.1641 of 2012. While dismissing the petition, this Court observed as under:

> "2. In my considered opinion, this petition filed under Section 482 Cr.P.C. is not at all maintainable because the order impugned in this petition is revisable under Section 397 Cr.P.C. When the petitioner has got such an alternative remedy of revision, this petition cannot be maintained. It only deserves to be dismissed.
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> 3. In the result, the Criminal Original Petition is dismissed, however, with liberty to the petitioner to work out in the manner known to law."

4. Thereafter, the petitioner has preferred Criminal Revision Petition under Section 397(1) Cr.P.C. before the Principal District and Sessions Judge, Chennai in S.R.No.4483 of 2012. On 2.5.2012, the revision was returned by the Vacation Judge requiring to state how the revision petition was in time. Challenging the same, the petitioner has preferred this Criminal Original Petition seeking clarification of the order passed in Crl.O.P.No.1641 of 2012 .

5. The learned counsel for the petitioner submitted that this Court while exercising power in the earlier Crl.O.P.No.1641 of 2011 has given liberty to the petitioner to work out in the manner known to law. Pursuant to the liberty only, the petitioner has filed Criminal Revision Petition before the learned Sessions Court. However, without applying his judicial mind, the learned Vacation Judge, returned the revision stating that how the revision was in time. Therefore, the learned counsel seeks clarification to clarify the order dated 14.2.2012 passed in Crl.O.P.No.1641 of 2012 qua delay and direction to number the revision filed by the petitioner.

6. Before the learned XVIII Metropolitan Magistrate, Saidapet, Chennai, the petitioner has filed Crl.M.P.No.964 of 2011 in C.C.No.1116 of 2004 under Section 311 Cr.P.C. seeking to issue witness summons to the Branch Manager, Indian Bank, Chinthadripet, Chennai and to direct him to produce the Account Number and the entire details and in the said petition, the petitioner also sought direction on the Registrar of Chits, office of the Sub Registrar, Mylapore, Chennai to produce the entire records in connection with ATSR 15 Chit Group transaction with the respondent. By an order dated 25.4.2011, the learned XVIII Metropolitan Magistrate, Saidapet, Chennai, partly allowed the petition. The operative portion of the order reads thus:

> "Hence to examine the Registrar of Chits is not necessary to prove the case of accused.
> But however to rebut the presumption an opportunity should be given to the petitioner/accused to examine the Branch Manager.
> Finally this petition is partly allowed and partly dismissed."

7. Aggrieved by the said order, the petitioner preferred Crl.O.P.No.1641 of 2012. While dismissing Crl.O.P.No.1641 of 2012, the learned Single Judge of this Court stated that as the order dated 25.4.2011 is revisable under Section 397 Cr.P.C., liberty was given to the petitioner to work out in the manner known to law. Pursuant to the liberty given, when the petitioner filed Criminal Revision Petition before the Vacation Judge, the same was returned. In such situation, the petitioner seeks clarification whether any delay could be counted in preferring Criminal Revision Petition by the learned Sessions Judge.

8. It is to be noted that during vacation i.e., on 09.5.2012, the learned counsel for the petitioner has mentioned before the learned Vacation Court Single Judge of this Court and had also given letter for moving Criminal Original Petition for clarification. In his letter, the learned counsel stated as under:

> "5.In this juncture in Trial court the C.C.No.1116 of 2004 case was posted on 02.05.2012, 03.05.2012 for final arguments. The complainant submitted his arguments on 03.05.2012, further the trial court judge refused to give further adjournments and the C.C.No.1116 of 2004 case is posted today (09.05.2012) for final arguments. Hence, in the interest of natural justice kindly permit me to file the General Direction petition before this Hon'ble court in vacation period and pass appropriate order or other orders if deem fit thus render justice."

9. The petitioner contended that he had made some payments to the respondent in the chit transaction through Indian Bank cheque, Chinthadripet Branch, Chennai. But those payments were not entered in the chit books of the respondent. It was further contended that the respondent was illegally conducted the alleged Chit No.ATSR 15 group and in order to clarify the said transaction, it was necessary to examine the Registrar of Chits, Mylapore, Chennai.

10. According to the respondent, the petitioner was the Partner of M/s.Chennai Traders and was a subscriber of the chit conducted by the respondent. The committed default in payment of subscriptions and therefore, he was liable to pay a sum of Rs.1,15,000/- to the respondent towards money due on prized chits. In discharge of part of the said debt and liability, the petitioner had issued cheque dated 15.11.2003 for a sum of Rs.55,000/-. When the cheque was presented for encashment, the same was returned with an endorsement “funds insufficient” and after issuing statutory notice, the respondent has filed private complaint and the same was taken on file as C.C.No.1116 of 2004.

11. The petitioner having subscribed the chit, cannot question the legality of the respondent in conducting the alleged Chit No.ATSR 15 for the reason that in the affidavit filed in support of Crl.M.P.No.964 of 2011, the petitioner has stated that he had made some payments to the respondent in the alleged chit transaction. However, for proper adjudication of the dispute involved in C.C.No.1116 of 2011, if both the Branch Manager, Indian Bank, Chinthadripet Branch, Chennai and the Registrar of Chits, Mylapore, Chennai were summoned and examined, no prejudice would be caused to the respondent. Moreover, if both the officials were examined, their evidence would be very much helpful to the trial Court to decide the case.

12. Therefore, in the interest of justice, leaving aside the delay in filing the Criminal Revision Petition before the learned Sessions Judge and direction on the learned Sessions Judge to number the Criminal Revision Case, to put the controversy to an end, by exercising power, this Court permit the petitioner to take witness summons to the Branch Manager, Indian Bank, Chinthadripet, Chennai for production of details in respect of Account Number OCC 30 and examine the officials of the Bank. The petitioner is also permitted to take witness summon to the Registrar of Chits, Office of the Sub-Registrar, Mylapore, Chennai for production of the entire records in connection with ATSR-15 chit group transaction with the respondent and examine the officials of the Registrar of Chits.

13. The Criminal Original Petition is allowed on condition that the petitioner should examine the afore said two officials within a period of four weeks from the date of receipt of a copy of this order and thereafter, the learned XVIII Metropolitan Magistrate, Saidapet, Chennai is directed to dispose of C.C.No.1116 of 2004 within a period of eight weeks thereafter. It is made clear that if the petitioner fails to adhere to the aforesaid condition, the learned XVIII Metropolitan Magistrate, Saidapet, Chennai is directed to dispose of the case on merits and in accordance with law. Consequently, connected M.P.No.1 of 2012 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Principal District & Sessions Judge, Chennai.

2.The Vacation Judge/
I additional District and Sessions Judge,
Chennai.

3.The XVIII Metropolitan Magistrate,
Saidapet, Chennai.

4.The Public Prosecutor,
High Court, Madras.

Copy to:

1.The Branch Manager,
Indian Bank,
Chinthadripet, chennai.

2.The Registrar of chits,
officer of the Sub Registrar,
Mylapore, chennai.

+2cc to Mr.A.Ramaswamy, Advocate sr.no.41660

CRL.OP.No.11750 of 2012

jp(co)
nr 05/12/2018