

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.433 of 2014 and
M.P.Nos.1 & 2 of 2014

1. Jayalakshmi
2. Sumithra
3. Sathish Kumar

....Petitioners/Accused 3,5 & 6
Vs.

S.Sivakumar Respondent/Complainant

Prayer: The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure against the order dated 05.04.2014 made in C.M.P.No.3200 of 2013 in C.C.No.215 of 2013 by the learned Judicial Magistrate II, Tiruppur.

For Petitioners : Mr.K.S.Karthik Rajan

For Respondent : Mr.R.Rajarajan

ORDER

This criminal revision has been filed against the order dated 05.04.2014 made in C.M.P.No.3200 of 2013 in C.C.No.215 of 2013 by the learned Judicial Magistrate II, Tiruppur.

2 It is the case of the respondent/complaint that one Balu along with the petitioners and other partners had borrowed a sum of Rs.15,00,000/- from the respondent and issued a cheque bearing No.647923 dated 28.12.2012 drawn on Karnataka Bank for a sum of Rs.15,00,000/-. The respondent/complainant presented the cheque for collection, which was returned with an endorsement "Drawer's Signature Differs" and hence he sent a legal notice, but the accused were neither repaid the amount nor sent any reply for the same. Therefore, the respondent filed a private complaint before the learned Judicial Magistrate II, Tiruppur, against the petitioners herein and three others including the firm, which was taken on file in C.C.No.215 of 2013 .

3 Pending the above case, the petitioners herein, who are accused 3, 5 & 6 had filed a petition in C.M.P.No.3200 of 2013, under Section 245 of Cr.P.C. seeking discharge. The learned Magistrate, after giving due opportunities to both the parties, had dismissed the petition by order dated 05.04.2014, against

which, accused 3, 5 & 6 have preferred this criminal revision before this Court.

4 The learned counsel for the petitioners would submit that on the date of issuing the cheque, the petitioners were not partners in the firm and they had come out from the partnership firm as early as on 19.07.2011. The learned Magistrate failed to consider the above fact and erroneously dismissed the petition seeking discharge, which warrants interference of this Court.

5 The learned counsel for the respondent/complainant would submit that even though the petitioners took a stand that they had relived from the partnership firm, but, failed to produce any proof for the same. The learned Magistrate has rightly appreciated the above fact and dismissed the petition filed by the petitioners, seeking discharge.

6 Heard the learned counsel appearing on either side and perused the materials available on record.

7 On a perusal of the records, it reveals that the petitioners sought discharge on the ground that at the time of issuing the cheque, they were not partners in the partnership firm. But, since the borrower company is a partnership firm, they failed to produce any legal proof to prove the fact that on the date of issuance of the cheque, they are not partners in the said company. Even though, at the time of issuing the cheque, they were not partners, but at the time of borrowing money, they are partners in the firm and the same was admitted by all the accused in the above case. Once they admitted that they were partners of the firm, it is for them to file a proof to show that on the date of issuing cheque, they were not continued as partners of the firm. The learned Magistrate has rightly appreciated the above facts and dismissed the petition seeking discharge, in which, this Court does not find any perversity. Further at the time of deciding petition, seeking discharge, the Court has to see the allegations and averments made in the complaint and the defence taken by the accused need not be looked into. The probative value of the materials need not gone into at this stage.

8 In the result, the revision is dismissed. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

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To

1. The Judicial Magistrate II, Tiruppur.

2. The Chief Judicial Magistrate
Tiruppur.

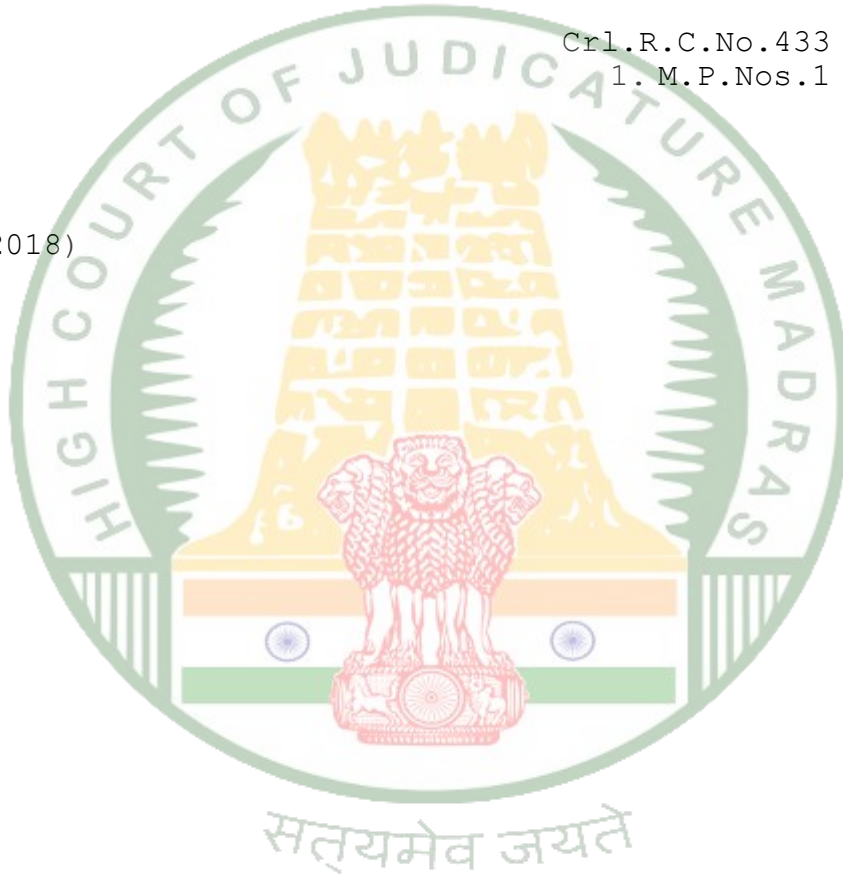
3. The Section officer
Criminal Section, High Court, Madras 104.

+1 CC to Mr.R.Rajarajan, Advocate sr 64002.

+1 CC to Mr.K.S. Karthik Raja, Advocate sr 64198

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BR(CO)
SP(01/11/2018)



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