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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :29.10.2018

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAYAN

Crl.O.P.(MD)No.14252 of 2015
and
M.P.(MD)No.1 of 2015

R.Sakthivel ... Petitioner/Sole Accused

Vs.

R.Thirupathi Venkateswaran ...Respondent/Complainant

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the order passed by the learned Judicial Magistrate, Sivakasi, in Cr.M.P.No.6018 of 2015, dated 10.07.2015 in C.C.No.361 of 2012.

For Petitioner : Mr.D.Dhana Chandra Prakash
For Respondent : M/s.Eddy and Embbass

ORDER

This Criminal Original Petition has been filed to set aside the order passed by the learned Judicial Magistrate, Sivakasi, in Cr.M.P.No.6018 of 2015, dated 10.07.2015 in C.C.No.361 of 2012.

2.The respondent/defacto complainant filed a complaint for the offence punishable under Section 138 of Negotiable Instruments Act as against the petitioner herein. The case of the petitioner is that towards part settlement of the loan borrowed by the petitioner, the petitioner issued a cheque and the same was returned with an endorsement 'funds insufficient'. After issuance of statutory notice, the complaint has been filed. After the trial proceedings, the respondent/complainant filed a petition to re-open and recall the witnesses one Saravana Karthick and SHO, Sivakasi Town Police Station, who examined as State witnesses. The said petition was allowed as against which, this present petition is filed.

3.The learned counsel for the petitioner/accused contended that the petition to re-open is not contemplated under the criminal procedure code. Further he would contended that after filing the memo of written arguments under Section 314 of Cr.P.C, and serving a copy of the same to the respondent/defacto complainant, only to fill up the lacuna, the present petition has been filed without any provision in the criminal procedure code. The learned Judicial Magistrate, Sivakasi, without even considering the same, immediately

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allowed the petition. Therefore, he prayed to set aside the order.

4.The learned counsel for the respondent/complainant would submit that though re-open meant for recall the witnesses namely Saravana Karthick and SHO, Sivakasi Town Police Station, the specific case of the respondent is that the alleged cheque has been misplaced on 23.09.2012, for which complaint has been lodged. They are very much necessary witnesses to prove the case of the complainant. Therefore, the order passed by the learned Judicial Magistrate Sivakasi, is legally sustainable one and he prayed for dismissal of the petition.

5.It is seen from the records, in the petition filed by the respondent/complainant though mentioned as re-open, it is meant for re-call the witnesses Saravana Karthick and SHO, Sivakasi Town Police Station. Further, it appears that the said two persons mentioned in the petition are very essential witnesses for the complainant to prove his case. Therefore, the trial court has rightly allowed to re-call the witnesses Saravana Karthick and SHO, Sivakasi Town Police Station. This Court is not find and illegality or infirmity in the order passed by the learned Judicial Magistrate, Sivakasi.

6.Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CRL.SIDE)

/True Copy/

Sub Assistant Registrar(CS-I)

To
The Judicial Magistrate, Sivakasi.

COPY TO
The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai. 2COPIES

• 1 CC TO M/s.Eddy and Embbass , ADVOCATE IN SR No. 93257.

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