



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.10.2018

CORAM:

WEB COPY

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Cr1.R.C(MD)No.334 of 2018

S.Muthukrishnan

.. Petitioner/Petitioner/Accused

Vs.

U.Babu Ganesh

.. Respondent/Respondent/Complainant

PRAYER: Criminal Revision Case is filed under Section 397 r/w. 401 of the Code of Criminal Procedure, to call for the records relating to the order passed in Cr.M.P.No.1733 of 2018 in S.T.C.No.10 of 2008 dated 01.06.2018 on the file of the learned Judicial Magistrate No.IV, Tirunelveli and set aside the same as illegal.

For Petitioner : Mr.J.Jeyakumaran
For Respondent : No appearance

ORDER

This revision has been filed against the impugned order dated 01.06.2018 made in Cr.M.P.No.1733 of 2018 in S.T.C.No.10 of 2008 on the file of the learned Judicial Magistrate No.IV, Tirunelveli.

2. Heard the learned counsel for the revision petitioner and the learned counsel appearing for the respondent.

3. The revision petitioner challenges the order of the trial Court made in Cr.M.P.No.1733 of 2018 in S.T.C.No.10 of 2008 dismissing his application filed under Section 254 Cr.P.C. to summon two of the witnesses, who are the employees of the AXIS Bank to prove that the cheque returned was not for want of fund but for material alteration in the account claiming to be written in figures.

4. The trial Court after considering the evidence let in by the prosecution as well as the Court witnesses 1 and 2 has held that there is no specific reason mentioned in the petition as to why the then Deputy Manager-Subburaj and Cashier-Rajendran could be summoned in this case.

5. The learned counsel for the revision petitioner would submit that in his petition filed under Section 254 Cr.P.C. he has specifically mentioned that these two witnesses are required to be examined to establish the fact that on issuing the cheque, which



came for collection they have found that there is material alteration in the cheque and insertion of 3 before Rs.20,000/- caused doubt in their mind and hence, they called the accused to the bank to confirm whether he has issued the cheque. When the accused informed that he gave the cheque only for Rs.20,000/- and not for Rs.3,20,000/-, they have simply returned the cheque without memo. That is the reason, why the complainant has not annexed the memo of his bank along with the returned cheque. So, it is contended by the learned counsel for the revision petitioner that for the said purpose, he has specifically mentioned in the petition that under the provision of Section 254 Cr.P.C., Subburaj and Rajendran should be summoned and examined.

6. The learned counsel for the revision petitioner would harp upon the failure of the complainant in not filing the intimation memo of the bank in his complaint and also tried to emphasis that the cheque was handed over to the complainant without intimation memo since there was alteration in the cheque and this fact could be proved through Subburaj- Deputy Manager and Rajendran- Cashier.

7. One has to bear in mind that for a compliant under Section 138 of NI Act, the factum of issuance of cheque for discharge of enforceable debt, presentation of the cheque for collection, bouncing of the cheque for want of fund, demand for pay the cheque through a statutory notice and failure to pay the cheque amount by the drawer are the prime ingredients and pleas to be mentioned in a complaint under Section 138 of NI Act.

8. The deposition of CW1 and CW2 copy of which now circulated by the learned counsel for the revision petitioner, the factum of presentation of the cheque for collection is spoken by these witnesses. The cheque is related to the account maintained by the accused. The failure of the complainant to file the intimation memo will not go to the root of the complaint. Whether the cheque was returned for material alteration in the instrument has to be tested by the trial Court on examining the instrument in the scientific manner and for that non filing of intimation memo is not an inferential fact. Therefore, this Court find no reason to interfere the order passed by the trial Court. Hence, the order impugned in this revision stands confirmed.

9. In the result, this Criminal Revision Case stands dismissed. All the defence available to the accused which has now bound canvassed regarding the material alteration found in the cheque is bound to the petitioner/accused to canvass before the trial Court.

Sd/-
Assistant Registrar(Protocal)



To

1. The Judicial Magistrate No.IV,
Tirunelveli.

2. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1cc to Mr.J.Jeyakumaran Advocate in SR.No.89943

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PJL

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