



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2019

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl.R.C. No.509 of 2019
and
Crl.M.P.No.7056 of 2019

M/s.Kandavel Steel Mart
Rep. by its Proprietor,
J.Magesh,
38, Venkata Maistry Street,
1st Floor, Mannady,
Chennai - 600 001,
also at 14/15, S.A. Colony, Kodungaiyur,
Chennai - 600 118. ... Revision Petitioner/Accused

Vs.

T.S.Murali ... Respondent/Complainant

Prayer: Criminal Revision Case filed under Section 397 and 401 Cr.P.C., praying to call for the records and set aside the order passed by the XV Additional City Civil and Sessions Court, Chennai, passed in Crl.M.P.No.301 of 2018 in C.A.No.275 of 2018 dated 12.02.2019 and permit him to take further evidence for examining Assistant Commissioner (CT) Harbour-V, Assessment Circle, Chennai, to mark the cancellation certificate of registration.

For Petitioner : Mr.T.R.Ravi

O R D E R

This Criminal Revision Case has been filed to call for the records and set aside the order passed by the XV Additional City Civil and Sessions Judge, Chennai, in Crl.M.P.No.301 of 2018 in C.A.No.275 of 2018, dated 12.02.2019, and permit the petitioner to take further evidence for examining Assistant Commissioner (CT) Harbour-V, Assessment Circle, Chennai, to mark the cancellation certificate of registration.



2.The petitioner faced prosecution in C.C.No.207 of 2016 for the offence under Section 138 of the Negotiable Instruments Act before the Fast Track Court No.IV, George Town, Chennai, and was convicted and sentenced on 26.04.2018. Challenging the conviction and sentence, the petitioner filed C.A.No.275 of 2018 and the same is now pending on the file of the XV Additional City Civil and Sessions Court, Chennai. During the pendency of the appeal, the petitioner filed CrI.M.P.No.301 of 2018 in C.A.No.275 of 2018 under Section 391 Cr.P.C. for adducing additional evidence, which has been dismissed by the Sessions Court, aggrieved by which, the present revision case has been filed.

3.It is the case of the petitioner that he was running a partnership concern in the name and style of 'Kandavel Steel Mart'; he was maintaining an account with Canara Bank, Broadway Branch; he has closed his business as early as on 31.03.2010 and a letter of "stop payment" dated 31.12.2010 was given by the petitioner to the Bank Manager; the impugned cheque is dated 25.07.2011. The Bank Manager was examined as D.W.1 and the letter given by the petitioner was marked as Ex.D1. However, the trial Court held that the closure of the Bank account would not mean that the petitioner would not have issued the impugned cheque. On that reasoning, the contention of the petitioner was rejected. Now, before the Appellate Court, the petitioner wanted to examine the Sales Tax Officer in order to prove that Kandavel Steel Mart ceased operation as early as on 31.03.2010.

4.In the opinion of this Court, even admitting for a moment that Kandavel Steel Mart had closed operations on 31.03.2010, it is for the accused/petitioner to satisfactorily explain to the Court, as to how, the cheque came into the hands of the complainant. Once the accused admits his signature in the cheque, then the burden under Section 139 of the Negotiable Instruments Act would shift on to the accused and he can discharge the said burden by preponderance of probability. Even with the evidence available on record, the petitioner can satisfy the Appellate Court that there was no subsisting debt and that the complainant has misused the cheque. Normally, Section 391 Cr.P.C. will be invoked, only to let in a piece of evidence, which was hitherto not available with the party. In this case, the Sales Tax records were available with the petitioner even during trial and for the reasons best known to him, he did not adduce any evidence on this aspect before the trial Court.



5. For all the aforesaid reasons, this Court does not find any infirmity in the order dated 12.02.2019, passed by the XV Additional City Civil and Sessions Judge, Chennai, in CrI.M.P.No.301 of 2018 in C.A.No.275 of 2018, warranting interference. As stated above, it is open to the petitioner to establish before the Sessions Court, the falsity of the complainant's case, with the evidence available on record.

6. In the result, this Criminal Revision Case is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The XV Additional Judge,
XV Additional City Civil and Sessions Court,
Chennai.

2. The Metropolitan Magistrate,
Fast Track Court No.IV,
George Town, Chennai-600 001.

+1cc to Mr.T.R.Ravi, Advocate Sr.47681

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srg 11/07/2019