

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.12.2020

PRONOUNCED ON : 21.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1032 of 2020 and
Crl.M.P.No.7175 of 2020

Chakravarthy ... Petitioner

Vs.

Jayaprakash ... Respondent

PRAYER: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order dated 23.07.2020 passed in C.M.P.No.415 of 2019 in C.A.No.23 of 2019 passed by the III Additional District and Sessions Judge, Kallakurichi.

For Petitioner : Mr.R.Agilesh

For Respondent : Mr.C.Iyyappa Raj,
Additional Public Prosecutor

ORDER

The petitioner is an accused in C.C.No.45 of 2013 for offence, under Section 138 of the Negotiable Instruments Act, 1881. The learned Judicial Magistrate, Fast Track Court, Kallakurichi, by judgment, dated 15.02.2019 in C.C.No.45 of 2013, convicted the petitioner and sentenced him to undergo one year Rigorous Imprisonment and to pay a fine of Rs.10,00,000/-, in default to

undergo three months Rigorous Imprisonment, against which, he preferred an appeal in C.A.No.23 of 2019 before the learned III Additional District and Sessions Judge, Villupuram @ Kallakurichi. The petitioner filed a petition under Section 391 Cr.P.C to examine one Kalaiyarasi as additional witness with regard to Ex.R1 in C.M.P.No.415 of 2019 in C.A.No.23 of 2019. The learned III Additional District and Sessions Judge, Villupuram @ Kallakurichi, dismissed the said petition by order dated 23.07.2020, against which the present revision.

2.The brief facts of the case is that the petitioner borrowed a sum of Rs.10,00,000/- from the respondent, who was running Jaya TV Traders, by way of two cheques dated 02.06.2010 for Rs.6,00,000/- and Rs.4,00,000/-, totaling Rs.10,00,000/-. In discharge of his liability, the petitioner issued cheque bearing number 317362, drawn on Lakshmi Vilas Bank, Kallakurichi. When the said cheque was presented by the respondent for encashment in his bank viz., Karur Vysya Bank, Kallakurichi Branch on 13.08.2012, the same was returned for the reason "Exceeds Arrangement". The respondent caused statutory notice on 21.08.2012, which was received by the petitioner on 24.08.2012, the petitioner sent a reply on 29.08.2012, which was not

acceptable to the respondent. Hence, the petitioner was prosecuted for offence under Section 138 of the Negotiable Instruments Act, 1881. During trial, the respondent examined himself as PW1; PW2 Cashier of PW1; PW3, Auditor of PW1; PW4, Manager of Karur Vysya Bank, Kallakurichi through whom, Exs.P1 to P10 were marked. On the side of the defence, DW1, the Bank Manager was examined and through whom Exs.D1 & D2 were marked.

3.The learned counsel for the petitioner submitted that the petitioner marked the copy of sale agreement dated 04.06.2010 as Ex.D1, which was entered between one Kalaiyarasi and the respondent. The petitioner issued Ex.P1/Cheque as security for Ex.D1. In pursuance to the sale agreement, the petitioner handed over signed blank cheque as security to help the said Kalaiyarasi, who is none other than the petitioner's sister in law. The trial Court observed in its judgment referring to Ex.D1, that the petitioner is not signatory to Ex.D1, it is signed by Srinivasan and Ramasamy a witnesses and they are not been examined as witnesses in the case. Further, with regard to Ex.D1, there is a civil dispute pending between the respondent and the said Kalaiyarasi. In view of the said observation made by the trial Court, the petitioner contended that the examination of said Kalaiyarasi and to let-in

additional evidence through her becomes justifiable, giving such a reason a petition at the appellate stage under Section 319 Cr.P.C., filed by the petitioner, which was not entertained and dismissed, the Lower Appellate Court dismissing the petition is not proper.

4.The learned counsel for the petitioner further submitted that the primary object of Section 391 Cr.P.C., is to prevent guilty man escape through some careless or ignorant proceedings before a Court of law or vindication of innocent person wrongful accused. It is essential to exercise the power under Section 319 Cr.P.C. In view of the same, the examination of said Kalaiyarasi is proper to putforth his defence. The lower appellate Court failed to consider these aspects and dismissed the petition.

5.In support of his contention, the learned counsel for the petitioner filed typed set the following citations, harping on the point that the cheque was given as security and not in discharge of any liability:-

- State of Gujarat Versus Mohanlal Jitamalji porwal & Another reported in CDJ 1987 SC 280.
- Manju Ram Kalita Versus State of Assam reported in (2009) 13 SCC

330.

- Sampelly Satyanarayana Rao Versus Indian Renewable Energy Development Agency Limited reported in CDJ 2016 SC 835..
- Basalingappa Versus Mudibasappa reported in CDJ 2019 SC 471.

6.The learned counsel for the respondent strongly denied the averments and submissions of the learned counsel for the petitioner and submitted that the intention of the petitioner is only to drag on the proceedings as could be seen from the docket entries. The petition in C.M.P.No.415 of 2019 was filed on 30.10.2019 and after several adjournment, the order came to be passed on 23.07.2020. The cheque is of the year 2012 and the case came to be filed before the trial Court in the year 2013, the judgment could be only rendered only in the year 2019. In the meanwhile, the petitioner filed several petitions before the lower appellate Court as well as before this Court, which are listed in the judgment of the trial Court as well as in the impugned order, which exhibits the conduct and intention of the petitioner. He further submitted that the petitioner has not brought new facts, in putting putforth the present contention after the trial, the petitioner had not made out a case. The dispute between the respondent and the said Kalaiyarasi with regard to the sale agreement is a subject matter in O.S.No.91 of 2011, which went up to the

Hon'ble Supreme Court, decided in favour of the respondent. The issue involved in the suit is no way connected with the case in hand. Further, the said Kalaiyarasi has not made any mention in the suit about Ex.D1 and with regard to present cheque. The petitioner now wants to take advantage of the strained relationship of the respondent with the said Kalaiyarasi, who is none other than the sister-in-law of the petitioner, to further drag on the proceedings. The trial Court had analysed the evidence in detail and given a well reasoned Judgment, wherein it clearly exposed the petitioner's contradictory stand and hollowness in his defence. At the stage of final hearing of the appeal, the above petition has been filed to drag on the proceedings. The Lower Appellate Court considering the submissions and the materials by a detail order dismissed the petition filed under Section 392 Cr.P.C., which needs no interference.

7.This Court considered the rival submissions and perused the materials available on record.

8.The petitioner received a loan of Rs.10,00,000/- by way of two cheques, Rs.6,00,000/- and Rs.4,00,000/-, dated 22.06.2010. To prove the

same, the respondent examined himself as PW1. PW2 is the Cashier through whom Ex.P6, the statement of account for the year 2010-2011 had been marked, in which, the only payment made to the petitioner is reflected. Through the Auditor/PW3, Ex.P8 Income Tax Return, which confirmed the loan. Through PW4, Exs.P9 & P10, the cheque through which the petitioner received the money has been produced. The petitioner marked Ex.D1, and nothing more. Even the witnesses to Ex.D1 have not been examined during the trial. The petitioner admitted that the signed blank cheque was handed over and not disputed his signature, he had not brought any material to substantiate his defence made any ground to show, examination of Kalaiarasi is imperative. Normally additional evidence are permitted in exceptional case when there are undisputed facts and documents of sterile quality failed to be brought in as evidence. In this case it is not so.

9.The Hon'ble Apex Court in the case of “**Ashok Tshering Bhutia Versus State of Sikkim in Criminal Appeal No.945 of 2003**”, held that the additional evidence can be taken at the appellate stage in exceptional situation to remove the irregularity where the circumstances so warrant in public interest. Generally, such power is exercised to have formal proof of the

documents etc., just to meet the ends of justice. However, the provision of Section 391 Cr.P.C., cannot be pressed into service in order to fill up lacuna in the prosecution case. The citations relied by the petitioner are not applicable to the facts and issues raised herein.

10. The lower appellate Court had given a well reasoned order in dismissing the petition filed under Section 319 Cr.P.C., in C.M.P.No.415 of 2019 in C.A.No.23 of 2019, by order, dated 23.07.2020. This Court finds no reason to interfere with the same. Hence, the impugned order dated 23.07.2020, made in C.M.P.No.415 of 2019 in C.A.No.23 of 2019 is, hereby, affirmed and the revision is dismissed. The lower appellate Court to conclude the appeal without further delay. Consequently, the connected Miscellaneous Petition is closed.

सत्यमेव जयते

21.12.2020

Speaking order/Non-speaking order

Index: Yes/No

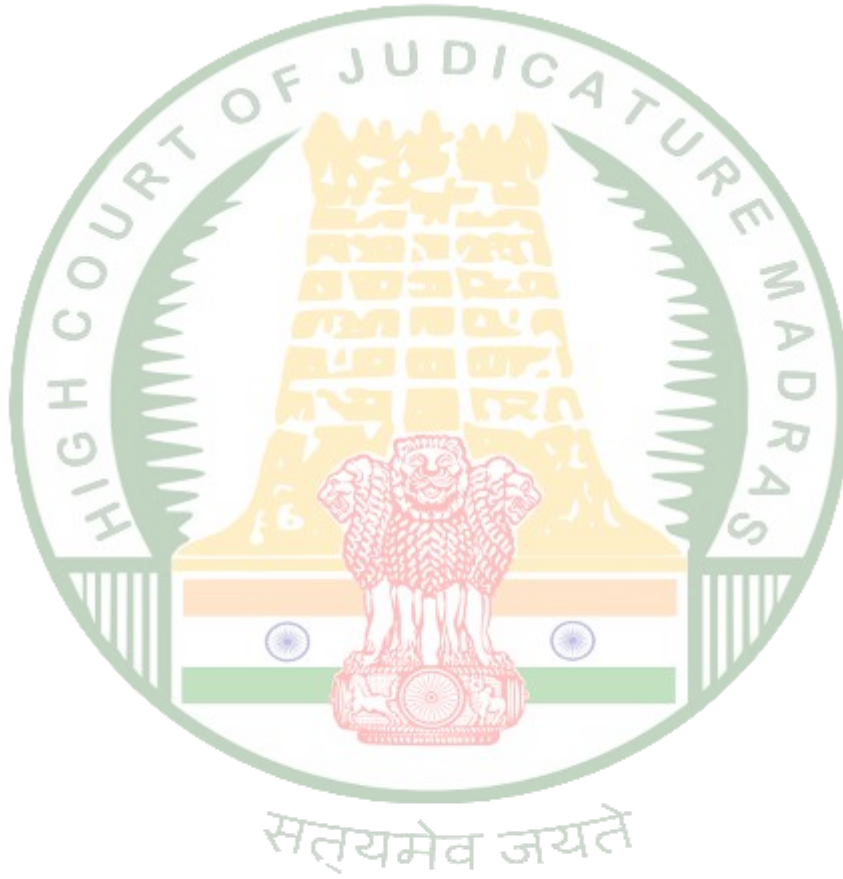
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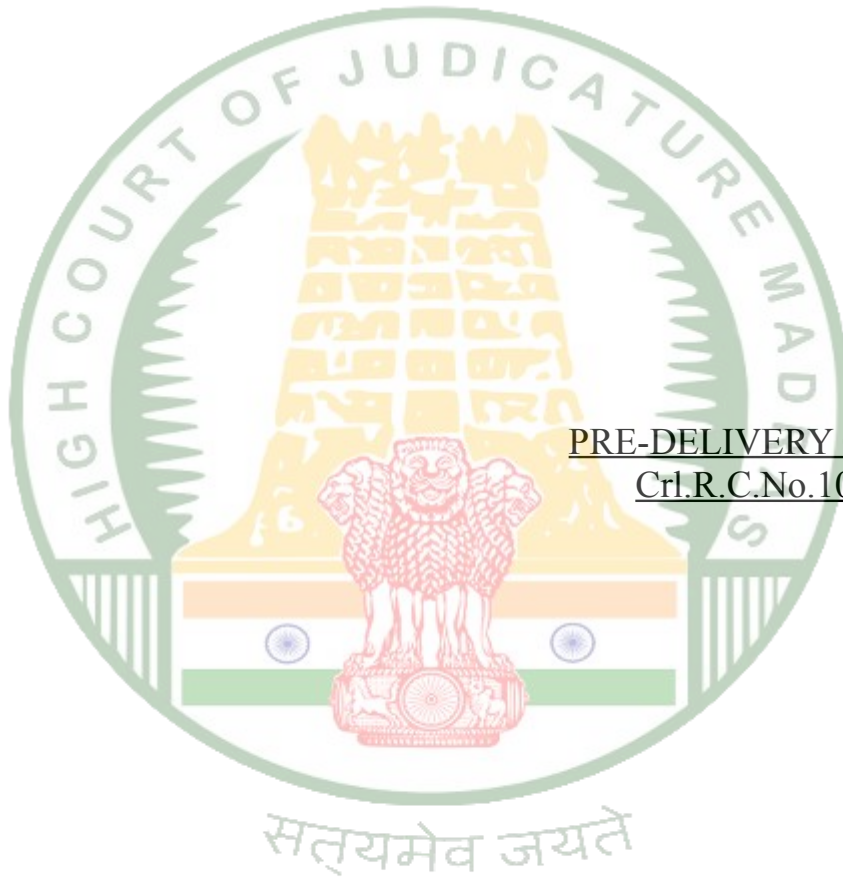
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Villupuram @ Kallakurichi.



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M.NIRMAL KUMAR, J.

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PRE-DELIVERY ORDER IN
Crl.R.C.No.1032 of 2020

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