



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2021

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THE HONOURABLE Mr. JUSTICE M.DHANDAPANI

Crl.OP.No.21768 of 2018

and

Crl.M.P.No.11931 of 2018

N.K.Narayanan

... Petitioner

Vs

M/s.Valarnithi Finance
Rep. by Managing Director,
V.Sanjeevi,
SPVN Complex,
First Floor, Attur Town,
Salem District.

... Respondent

The Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records pertaining to CMP.NO.87 of 2018 in Criminal Appeal No.133 of 2017 passed by the Additional District Judge-III, Salem, Salem District and to set aside the order dated 07.06.2018 by allowing this petition.

For Petitioner : Mr.K.Balasubramaniam

For Respondent : Notice served -No Appearance

ORDER

This Criminal Original Petition has been filed by the petitioner to set-aside the order dated 07.06.2018 in Crl.M.P.No.87 of 2018 in C.A.No.133 of 2017 on the file of the learned III Additional District & Sessions Judge, Salem.

2. The petitioner is accused and the respondent is complainant. The respondent/complainant filed a private complaint under section 200 Cr.P.C. against the petitioner, before the learned Judicial Magistrate, Athur, Salem, which was taken on file in S.T.C.No.50 of 2017 for the offence under section 138 of the Negotiable Instrument Act. The learned Magistrate, after fulfilled trial, found the petitioner/accused guilty for the offence under section 138 of the Negotiable Instruments Act and convicted and sentenced to pay a fine of Rs.5,00,000/- as compensation to the respondent/complainant, in default, sentenced to undergo simple imprisonment for a period of six months. As against the order of the trial Court, the



petitioner/accused has filed a criminal appeal before the learned District and Sessions Judge, Salem in C.A.No.133 of 2017.

3. During the pendency of the appeal, the petitioner has filed a petition in CrI.M.P.No.87 of 2018 under section 91 Cr.P.C, to direct the respondent/complainant to produce the documents, which was stated in the

complaint, before the appellate Court. The learned Judge, after considering the matter, dismissed the miscellaneous petition on merits. Against the order made in CrI.M.P.No.87 of 2018 in C.A.No.133 of 2017, the petitioner/accused has filed a present petition before this Court.

4. The learned counsel for the petitioner submitted that admittedly, the respondent is a registered finance company. If it is so, the respondent has to file the income tax return. The respondent company has to register Form-A Certificate issued by the Registrar of Firm and he has to maintain the resolution book and notice issued to the partners of the company regarding the meeting. At the time of enquiry, no opportunity was given to the petitioner to furnish the said materials. Therefore, the petitioner wanted to cross examine the complainant further on this aspect. However, the trial Court has failed to consider the fact and erroneously convicted the petitioner, which warrants interference of this Court.

5. Although, notice has been served on the respondent, the name has also been printed in the cause list, the respondent not appeared either in person or by an Advocate. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

6. A careful perusal of the complaint reveals that there was a money transaction between the respondent/complainant and the petitioner/accused, which is admitted. The petitioner has accepted and admitted the issuance of the cheque and the signature found on the cheque.

7. However, the present miscellaneous petition, which has been filed by the petitioner, which stood dismissed by the appellate court pertains to marking of additional document as evidence by invoking Section 91 of Cr.P.C. No doubt it is true that the petitioner can seek to mark additional evidence before the appellate Court relating to issues, which have a bearing on the case and which would be relevant to decide the issue. However, in the present case on hand, the document sought to be marked by the petitioner pertains to the signature as found in the cheque, which has been admitted to have been issued by the



petitioner to the defacto complainant. Once the petitioner has accepted the issuance of the cheque and the signature found therein, marking of any number of documents would not in any way absolve the petitioner for the offence committed by him. The cheque issued by the petitioner stood dishonoured, which resulted in the invocation of Section 138 of the Negotiable Instruments Act. The trial Court has rightly appreciated the facts while holding the petitioner guilty resulting in conviction and consequent sentence, which has been appealed against the petitioner. That being the factual position, filing of the miscellaneous petition under Section 91 Cr.P.C. for the purpose of marking certain documents, which have no bearing on the case has rightly been dismissed by the appellate Court pending finality of the appeal before it.

8. On a conspectus of the materials placed on record coupled with the admission of the petitioner relating to the issuance of the cheque and his signature appended thereto, the appellate Court has rightly rejected the miscellaneous petition filed by the petitioner on the ground that the petitioner is merely trying to prolong the case and the said finding recorded by the Court below cannot be found fault with.

9. Therefore, in the above circumstances, this Court is of the view that all the points raised by the petitioner can be raised before the appellate Court at the time of hearing of the appeal and no relief can be granted at this stage.

10. In the result, the Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Additional District Judge-III, Salem.

+1cc to M/s.C.Jagadish, Advocate, S.R.No.49895

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and
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SMI (CO)
SB(06/12/2021)