

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2021

CORAM:

THE HON'BLE MR. JUSTICE M.NIRMAL KUMAR

CRL. RC No.354 of 2021
and
CRL. MP. Nos.6066 and 6067 of 2021

M.Parthasarathy

.... Petitioner /
Accused

Versus

C. Karthikeyan

....Respondent

Prayer : Criminal Revision Petition filed under Section 397 r/w Sec. 401 of Cr.P.C. to call for the records of the Metropolitan Magistrate FTC III Saidapet in the CC No.3456 of 2017 and set aside the order passed by the learned Magistrate in Crl. M.P. No.63 of 2021 dated 15.02.2021 and permit the petitioner to avail the benefit of examining the bank witness as prayed for in the petition.

For Petitioner : Mr. Ramesh Kumar Chopra

ORDER

This Criminal Revision Petition has been filed seeking to call for the records of the learned Metropolitan Magistrate, Fast Track Court - III Saidapet passed in CC No.3456 of 2017 and to set aside the order in Crl. M.P. No.63 of 2021 dated 15.02.2021 and permit the petitioner to avail the benefit of examining the bank witness.

2. The brief facts of the case are as follows :-

a) The respondent/complainant filed a private complaint against the petitioner/accused and the said complaint was registered as case in C.C. No.3456 of 2017 before the learned Metropolitan Magistrate, Fast Track Court - III Saidapet for the offence under Section 138 of the Negotiable Instruments Act, 1881.

b) It is the case of the prosecution that the respondent/complainant was running an unregistered chit business and lent a hand loan of Rs.1,00,000/- to the petitioner/accused and in turn, the petitioner issued a cheque bearing No.268937, dated 04.02.2017 drawn on Indian Bank, Adhithanar Salai Branch for Rs.1,00,000/- as security for the aforesaid amount. Whiles, on presentation of the cheque on 07.02.2017, the said cheque was returned with endorsement "Insufficient Funds", which resulted in legal action has been initiated against the petitioner/accused.

c) On initiation of legal proceeding, the same was taken up for hearing before the learned Metropolitan Magistrate, Fast Track Court - III Saidapet in C.C. No.3456 of 2017 for the offences under Section 138 of the Negotiable Instruments Act, 1881.

d) Before the trial Court, the alleged Cheque bearing No.268937, dated 04.02.2017 drawn on Indian Bank, Adhithanar Salai Branch for Rs.1,00,000/- has been marked as Ex.P1; Cheque return Memo issued by the bank was marked as Ex.P2; legal notice was marked as Ex.P3 and postal cover addressed to the petitioner bearing endorsement "Door Locked" has been marked as Ex.P4. It further reveals that recording of evidence on the side of the respondent/complainant as well as cross examination of the complainant has been completed.

e) It is the case of the petitioner/accused that the statement of account pertaining to the savings bank account from which the cheque was alleged to have been issued, the said account was in active stage for certain period and thereafter, the account was dormant. Further, it reveals that the last cheque transaction attracted in the said statement was cheque No.268935, dated 01.08.2014, whereas the respondent/complainant has alleged a case under Section 138 of the Negotiable Instruments Act against the petitioner/accused for the instrument i.e., cheque bearing No.268937, dated 04.02.2017 drawn on Indian Bank, Adhithanar Salai Branch for Rs.1,00,000/-. It is also his contention that the signature found in the alleged cheque i.e. No.268937 was dull and the said cheque has been misused by the respondent/complainant.

f) Therefore, to prove the said stand, the petitioner/accused had filed the petition under Section 254(2) of Cr.P.C. to examine the Manager, Indian Bank, Pudupet Branch as defence witness before the learned Metropolitan Magistrate, Fast Track Court - III Saidapet.

3. The learned Metropolitan Magistrate, Fast Track Court - III Saidapet, dismissed the said petition on 15.02.2021, on the ground of Maintainability itself and the relevant portion of the said order reads as follows :-

"...

The accused can very well produce his bank statement to prove the same and there is no point in summoning any official witness. That will only lead consuming the time of the official witness without any purpose. Since the accused can very well produce the bank statement to prove the defence as claimed by him, this Court is of the view that entertaining the petition will not serve any purpose.

Hence the petition is not maintainable."

4. Aggrieved over the said dismissal order passed by the learned Metropolitan Magistrate, Fast Track Court - III Saidapet, this Criminal Revision Petition has been filed.

5. Heard Mr.Ramesh Kumar, Chopra, learned counsel for the petitioner and perused the materials and evidence placed on record before this Court.

6. On a perusal of the order passed by the court below as also the other materials available on record, it reveals that the respondent/complainant was running an unregistered chit business and lent a private loan of Rs.1,00,000/- to the petitioner/accused and in turn, he obtained cheques as security from the petitioner/accused. Further, it is clear that recording of evidence has been completed and cross examination of prosecution witnesses are over. Such being the case, this Court is of the view that the decision taken by the learned Magistrate as to the non-maintainable nature of the petition seems to be reasonable. The court below has observed that the petitioner can very well adduce evidence in defence of his contentions by producing the bank statement. The court below has not precluded the petitioner from adducing any evidence. Such being the case, it is always open to the petitioner to produce the necessary documentary evidence without calling the proposed defence witness to the box for examination. In such view of the matter, this Court is of the opinion that the petitioner can produce the documentary evidence along with a letter from the authorised official of the concerned bank to prove his claim as to the dormant nature of the account during the relevant period.

7. For the reasons aforesaid, I do not find any infirmity or illegality in the order dated 15.02.2021 in Crl. MP No.63 of 2021 in CC No.3456 of 2017 passed by the learned Metropolitan Magistrate, Fast Track Court - III Saidapet. However, liberty is granted to the petitioner to produce the bank statement as well as letter from the authorised official of the bank concerned in support of his claim. With the aforesaid direction, this Criminal Revision Petition stands disposed of. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

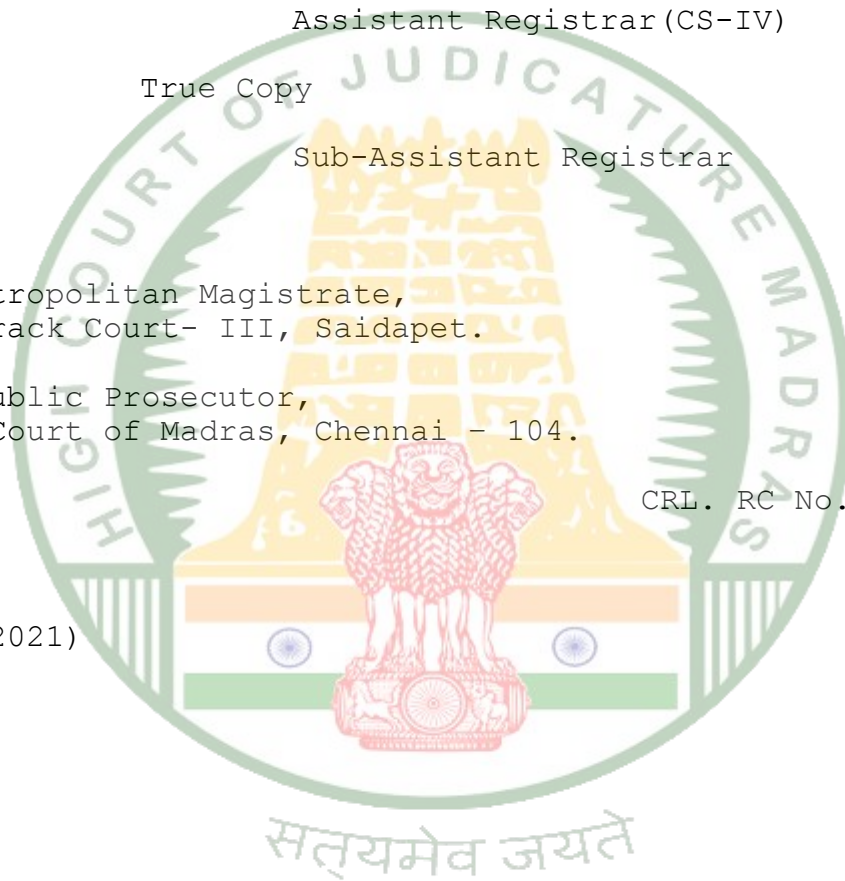
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To

1. The Metropolitan Magistrate,
Fast Track Court- III, Saidapet.
2. The Public Prosecutor,
High Court of Madras, Chennai - 104.

CRL. RC No.354 of 2021

SSD(CO)
SP(14/07/2021)



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