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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Criminal Revision Case No.588 of 2021

Panneerselvam

... Petitioner

Vs.

Kannan

... Respondent

Criminal Revision Case filed under Section 397 and 401 Cr.P.C. praying to call for the records in Crl.M.P.No.62 of 2020 in C.A.No.372 of 2018 on the file of the I Additional District Sessions Judge, Erode and set aside the same.

For Petitioner : Mr.M.Subash

ORDER

The Criminal Revision Case has been filed against the order in Crl.M.P.No.62 of 2020 in C.A.No.372 of 2018 on the file of the I Additional District and Sessions Judge, Erode, and to set aside the same.

2. The petitioner is accused and the respondent is the complainant. The respondent had filed a private complaint against the petitioner under Section 200 Cr.P.C. for the offence under Section 138 of Negotiable Instruments Act before Judicial Magistrate, Fast Track Court No.I, Erode. After enquiry, the learned Magistrate found guilt of the petitioner for the offence under Section 138 of Negotiable Instruments Act and convicted and sentenced him to undergo one month simple imprisonment and to pay the cheque amount of Rs.5 lakhs as compensation to the complainant/respondent herein.

3. Aggrieved over the said Judgment of conviction and sentence and compensation awarded by the learned Magistrate, the petitioner filed an appeal before the learned Principal District and Session Judge, Erode, in C.A.No.372 of 2018. The Learned Principal District and Sessions Judge, made over the appeal to the I Additional District and Sessions Judge, Erode, for disposal. During pendency of the criminal appeal, in the year of 2020, the petitioner filed a petition in Crl.M.P.No.62 of 2020 invoking Section 391 of Cr.P.C. seeking to examine the wife of the complainant and the Inspector of Police, Perundurai Police Station as additional witnesses on his side to establish that the



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Ex.P1/cheque was not given for legally enforceable debt and it was only given as a blank cheque by the accused to the complainant. The appellate Court dismissed the same by order dated 22.03.2021. Challenging the said order, now the petitioner/accused has filed the present revision before this Court.

4. It is seen that the petitioner himself has admitted the signature and execution of the cheque. However, the only denial of the petitioner is that the cheque was not issued for lawful consideration. In order to substantiate his defence, he wanted to examine the wife of the respondent/ complainant and the Inspector of Police, Perundurai Police Station and every opportunity was given to the petitioner before the trial Court. However, he has not taken any steps to examine those witnesses. If at all the petitioner felt that those witnesses are important witnesses to prove his defence, he should have examined them before the trial Court and the witnesses were very much available. Whereas, the petitioner has not chosen to examine those witnesses and after he lost his case, he filed an appeal before the appellate Court in the year 2018 and the appeal was pending before the appellate Court for about 2 years. After a period of 2 years, during the course of arguments, in order to protract the appeal, the petitioner has filed a petition invoking Section 391 of Cr.P.C. seeking to examine the wife of the complainant and the Inspector of Police, Perundurai, as additional witnesses on his side. But, Section 391 Cr.P.C. cannot be invoked for filling up the lacunae left by the parties before the trial Court as well as the appellate Court. If they could not secure and produce the witness before the trial Court or the appellate Court and subsequently, when they secure the witness or evidence or documents, they can invoke the above said Section. Whereas in this case, the said witnesses were very much available even during trial and the petitioner has not stated any reason why he had not examined those witnesses before the trial Court during trial on his side. Even at the time of filing the appeal in the year 2018, the petitioner has not filed any petition seeking for examination of additional witnesses. But only in the year of 2020, particularly at the time of arguments, the petitioner has filed the petition invoking Section 391 Cr.P.C.

5. Considering the above facts and circumstances of the case, this Court does not find any perversity in the order passed by the learned Magistrate and there is no merit in the revision and the revision is liable to be dismissed.

6. Accordingly, this Criminal Revision Case is dismissed at the admission stage itself.

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Assistant Registrar

True Copy

Sub-Assistant Registrar



To

1. The I Additional District Sessions Judge, Erode
2. The Principal Sessions Judge, Erode
3. The Judicial Magistrate, Fast Track Court, No.I, Erode.
- 4 The Chief Judicial Magistrate, Erode.

Crl.R.C.No.588 of 2021

GPL (CO)
PM(21/10/2021)