



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.533 of 2017
and
Crl.M.P.No.4745 of 2017

Balasubramaniam ... Petitioner/Accused
Vs.
M.Kanthaswamy ... Respondent/Complainant

PRAYER: This Criminal Revision Case has been filed under Section 397 read with Section 401 of Cr.P.C, to set aside the order dated 15.12.2016 made in CMP.No.6046 of 2016 in STC.No.73 of 2016 on the file of the learned Judicial Magistrate, Fast Track Court No.1, Erode.

For Petitioner : Mr.M.Guruprasad

For Respondent : No appearance

O R D E R

The accused in STC.No.73 of 2016, is the revision petitioner herein.

2.Brief facts of the case:

(a).The respondent herein had instituted a private complainant for the alleged offence under Section 138 of Negotiable Instruments Act 1988. The allegation in the complaint is that the revision petitioner had borrowed a sum of Rs.8,48,000/- and to discharge the said liability, the revision petitioner had issued a post dated cheque in favour of the respondent for a sum of Rs.8,48,000/-, dated 29.11.2014 drawn on Indus Ind Bank, Tiruppur Branch, Tiruppur - 04 bearing cheque No.186029 and promised to honor the same when it is presented for collection.

(b).The respondent herein has presented the same through his banker viz., Karur Vysya Bank Ltd., Sampath Nagar, Erode on 27.01.2015 and the same was returned for the reason "Funds Insufficient" with return memo dated 28.01.2015. Thereafter, the respondent herein had issued a legal notice to the revision petitioner on 17.02.2015 and the revision petitioner had received the same on 18.02.2015. Thereafter, the revision petitioner had given a detailed reply on 04.03.2015 refuting the contents of the 138(b) notice. The respondent/complainant did not give any rejoinder for the reply sent by the revision



petitioner. Thereafter, the respondent herein had initiated 138 proceedings in the above stated STC.No.73 of 2016.

(c).The revision petitioner reverently states that right from the inception of his appearance before the Trial Court, he had denied the very execution of the alleged cheque. Thereafter, the revision petitioner had filed a petition under Section 254 (2) of Cr.P.C in CMP.No.6046 of 2016, before the learned Judicial Magistrate, Fast Track Court No.I, Erode, to examine one Jaganathan and the Manager of Indus Ind Bank as defense witnesses and the said petition was dismissed on 15.12.2016.

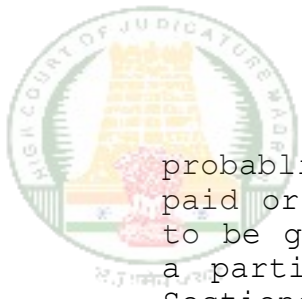
(d).Aggrieved against the said dismissal order passed by the Trial Court refusing to issue witness summons to the list witnesses viz., Jaganathan and the Manager of the Indus Ind Bank, the present Criminal Revision Case has been preferred by the revision petitioner before this Court.

3.Heard the learned counsel appearing for the revision petitioner. The learned counsel for the respondent is absent.

4.In the petition, it is specifically averred that the revision petitioner herein has filed a petition under Section 254(2) r/w Section 247 of Cr.P.C in CMP.No.4338 of 2016, to issue witness summons to the list witnesses by name N.Jaganathan and to the Branch Manager or any authorized officer, Indus Ind Bank KMA building, Eswaran Kovil Street, Tiruppur and both the list witnesses to be examined to prove that on 10.01.2014, a sum of Rs.1,50,000/- was transferred by the accused from his Bank account to the bank account of complainant's wife Company viz., Vijayalalshmi Garments. The learned Judicial Magistrate has held that the list witnesses are not necessary and accordingly dismissed the petition.

5.After going through the affidavit and also the statement made thereon, it is the specific case of the accused/revision petitioner herein that the respondent herein (complainant before the Trial Court) had transaction with regard to supply of materials that took place between the complainant and the list witnesses and the accused and hence, I find that when the said Jaganathan S/o.Nachimuthu, is having knowledge about the fact which was likely to probablize the suggestive case of the defence, he is a necessary party to be examined as a witness on behalf of the respondent before the Trial Court. In respect of the Branch Manager, IndusInd Bank, it is a specific plea that on 10.01.2014, a sum of Rs.1,50,000/- was transferred by the accused from his bank account to the account of the complainant's wife Company viz., Vijayalakshmi Garments.

6.Yet another fact that has to be elucidated from the Branch Manager, IndusInd Bank, is as to the alleged payment of Rs.1,50,000/- and hence, both these witnesses are material witnesses on the side of the revision petitioner/accused to



probablize the defence case that the cheque amount is already paid or not and hence, this Court finds that an opportunity has to be given to the defence to bring the best evidence which has a particular principle of law of evidence as enshrined under Sections 60, 64, 91 of the Indian Evidence Act, 1872 and therefore, this Court finds that the reason assigned by the Trial Court is not sustainable in law and the revision petitioner/accused should not be deprived of a liberty to probablize the suggestive case.

7.No doubt, it is true that earlier, the petition in CMP.No.4338 of 2016 filed by the accused was dismissed on 19.09.2016, however, at this juncture, PW1's cross-examination was not completed and after elucidating certain answer from PW1 during the cross-examination, he has come forward with another petition in CMP.No.6046 of 2016 and hence, this Court finds that there is a change of circumstances warranting summoning of these witnesses as defence witnesses on behalf of the respondent before the Trial Court/revision petitioner herein and hence, the order passed by the Trial Court in CMP.No.6046 of 2016 is set aside and hence, the said CMP.No.6046 of 2016 is allowed. The learned Judicial Magistrate, Fast Track Court No.I, Erode, is hereby directed to issue witness warrant to the above said list witnesses and to complete the case within a period of four months from the date of receipt of a copy of this order.

8.With the above direction, this Criminal Revision Case stands disposed of. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Judicial Magistrate,
Fast Track Court No.1,
Erode.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.30878

Cr1.R.C.No.533 of 2017
and Cr1.M.P.No.4745 of 2017

AD(CO)
SB(03/08/2021)