



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.04.2021

CORAM :

THE HONOURABLE **Mr. JUSTICE G.ILANGOVA**

Crl.O.P.(MD).No.5214 of 2021

and

Crl.MP(MD).No.3007 of 2021

WEB COPY

Sudhakar

...Petitioner/Sole Accused

Vs.

1. Mr.A.Balakrishnan

...Respondent No 1/Defacto Complainant

2. State through

the Sub Inspector of Police,

District Crime Branch,

Nagercoil,

Kanyakumari District.

(In Cr.No.24 of 2007)

... Respondent No 2/Complainant

Prayer : Criminal Original Petition is filed under Section 482 of Cr.P.C., to set aside the order made in Crl.M.P.(MD).No.4193 of 2020 in C.C.No.204 of 2008 on the file of the Judicial Magistrate No.1, Nagercoil order dated 01.02.2021.

For Petitioner

: Mr.G.Anto Prince

For Respondents

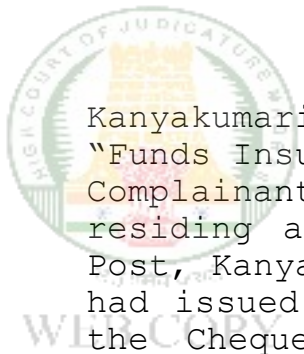
: Mr.R.Anandharaj

Additional Public Prosecutor.

ORDER

This Criminal Original Petition is filed to set aside the order made in Crl.M.P.No.4193 of 2020 in C.C.No.204 of 2008 on the file of the Judicial Magistrate No.1, Nagercoil, dated 01.02.2021.

2. The petitioner is working as a Teacher in Government Middle School, Kaththadithattu. On 26.06.2006, the petitioner came to the house of the defacto complainant at Kandavilai and demanded a sum of Rs.3,00,000/- (Rupees Three Lakhs Only) from the defacto complainant namely, A.Balakrishnan, who is the first respondent herein as loan for his personal requirements. The first respondent/defacto complainant gave a sum of Rs.3,00,000/- to the petitioner / alleged accused in the presence of the first respondent / defacto complainant's brother, one Mahalingam and in turn the Petitioner / alleged Accused person issued a Cheque bearing No.591778 of ICICI Bank, dated 10.11.2006 (SBGEN A/c.No.609501507286) as security and had signed in the Cheque as Sudhakar. The first respondent / defacto complaint had presented the above said Cheque on 10.11.2006 through Vijaya Bank, Nagercoil,



Kanyakumari District for collection and the cheque was returned as "Funds Insufficient" and the drawer's Signature differs. Further the Complainant came to know that the account belong to one P.Jayakumar residing at No.1-89, Kovillaiputhanveedu, Karukkupanai, Kappiyarai Post, Kanyakumari District. The petitioner with a malafide intention had issued the above said Cheque, signed as Suthakar, knowing that the Cheque belongs to one P.Jayakumar and cheated the defacto complainant to a tune of Rs.3,00,000/- and thereby the petitioner committed the offences punishable under Sections 420 and 468 of IPC.

3. The petitioner is the sole accused. The Trial Court charged the accused in C.C.No.204 of 2008 for the offence under Section 138 of the Negotiable Instruments Act on the ground that he issued a cheque for a sum of Rs.3,00,000/- towards the discharge of loan amount, which was presented for payment and returned as funds insufficient funds and on that ground, legal notice was issued demanding the payment of the amount and there was no reply.

4. Before the trial, Court PW1 to PW9 were examined and no witnesses were cross examined by the petitioner. The petitioner filed a petition under Section 311 of Cr.P.C to recall those witnesses for the purpose of cross examination. The Trial Court, on examining the facts and circumstances of the case came to the conclusion that the examination of witnesses was over 10 years back and the petitioner has not cross examined any of the witnesses on that day and on the ground that the cross examination of witnesses must be over on the same day itself and rejected the recall petition. Challenging the same, petitioner has filed the present petition.

5. The case is of the year 2008, now 13 years had lapsed. But however, I find that without cross examination of the witnesses, it would be difficult to decide the matter.

6. The purpose of cross-examination has been clearly enunciated by the Hon'ble Supreme Court in **Kartar Singh Vs State of Punjab** reported in **(1994) 3 SCC 569**. So, the points, which have been raised by the Hon'ble Supreme Court is extracted hereunder:-

"Section 137 of the Evidence Act defines what cross-examination means and Sections 139 and 145 speak of the mode of cross-examination with reference to the documents as well as oral evidence. It is the jurisprudence of law that cross-examination is an acid-test of the truthfulness of the statement made by a witness on oath in examination-in-chief, the objects of which are:



(1) to destroy or weaken the evidentiary value of the witness of his adversary;

(2) to elicit facts in favour of the cross-examining lawyer's client from the mouth of the witness of the adversary party;

(3) to show that the witness is unworthy of belief by impeaching the credit of the said witness:

and the questions to be addressed in the course of cross-examination are to test his veracity; to discover who he is and what is his position in life; and to shake his credit by injuring his character."

7. So, this position is also been pressed in the case of **Jayendra Vishnu Thakur Vs.State of Maharashtra** reported in (2009) 7 SCC 104 in the following words:-

"A right to cross-examine a witness, a part from being a natural right is a statutory right. Section 137 of the Evidence Act provides for examination-in-chief, cross-examination and re-examination. Section 138 of the Evidence Act confers a right on the adverse party to cross-examine a witness who had been examined in chief, subject of course to expression of his desire to the said effect. But, indisputably such an opportunity is to be granted. An accused has not only a valuable right to represent himself, he has also the right to be informed threabout. If an exception is to be carved out, the statute must say so expressly or the same must be capable of being inferred by necessary implication. There are statutes like the Extradition Act, 1962 which excludes taking of evidence vis-a-vis opinion."

8. Considering the nature of the case, this Court is inclined to allow the petition on the ground that cross examination of the witnesses are necessary to unearth the real truth of the matter. This Criminal Original Petition is allowed on condition that the petitioner must deposit Rs.1000/- as cost and pay the same to the witnesses within a period of 15 days from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

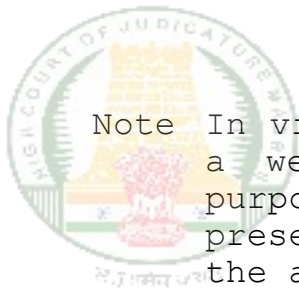
Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



Note In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

WEB COPY

To

- 1.The Sub Inspector of Police,
The District Crime Branch,
Nagercoil,
Kanyakumari District.
2. The Additional Public prosecutor,
Madurai Bench of Madras High Court,
Madurai

+1 CC to M/s.G.ANTO PRINCE, Advocate (SR-15584[F] dated
09/04/2021)

Crl.O.P.(MD)No.5214 of 2021
09.04.2021

CM(CO)
KB(10.08.2021) 4P 4C