



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.02.2021

Pronounced on : 19.02.2021

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

CRL.R.C. (MD).No.210 of 2017

and

CRL.M.P. (MD)No.1846 of 2017

1.Palaniyammal

2.Thiravidamani Selvam

: Petitioners

Vs.

K.P.Ramasamy, Through his power agent,

R.Santhanamoorathi

: Respondent

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C, to call for the records in Cr.M.P.No.41 of 2017, dated 09.01.2017 in C.C.No.32 of 2015 on the file of the learned Judicial Magistrate, (Fast Track Court), Srivilliputhur, Virudhunagr District and set aside the same.

For Petitioners : Mr.M.Sankar

For Respondent : Mr.G.Gomathi Sankar

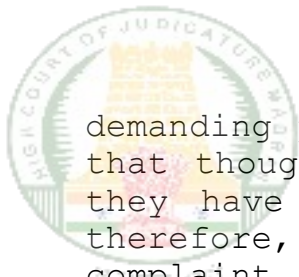
ORDER

The Criminal Revision Case is directed against the order passed in Cr.M.P.No.41 of 2017 in C.C.No.32 of 2015, on the file of the Court of Judicial Magistrate (Fast Track) Court, Srivilliputhur, dismissing the application filed under Section 243(2) of Cr.P.C.

2.The revision petitioners are the accused in the case filed under Section 138 of the Negotiable Instruments Act.

3.At the out set, on perusal of the records, this Court is constrained to observe that the revision petitioners, who had attempted to drag on the proceedings by filing the petition under Section 243(2) Cr.P.C, had achieved their object and purpose by filing the present revision, as the revision is pending for the past more than three years.

4.The respondent/complainant has filed the complaint under Section 138 of Negotiable Instruments Act against the petitioners alleging that the petitioners borrowed a sum of Rs.6,00,000/- on 21.02.2015 from the defacto complainant, that they have issued a cheque dated 18.03.2015 for Rs.6,00,000/- drawn on State Bank of India, Srivilliputhur, towards repayment of the loan amount, that when the respondent has sent the said cheque for collection through his banker Indian Bank, Srivilliputhur, the same was returned dishonoured for want of sufficient funds in the bank account of the accused, that the respondent sent a statutory notice on 07.04.2015,



demanding payment of the amount covered by the dishonoured cheque, that though the petitioners had received the notice on 13.04.2015, they have neither sent any reply nor made any payment and that therefore, the respondent was constrained to prefer the above complaint.

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5.It is not in dispute that after the closure of the complainant side evidence, when the said case was pending for defence evidence, the above petition under Section 243(2) Cr.P.C, seeking permission to examine one Girahadurai as defence witness, came to be filed.

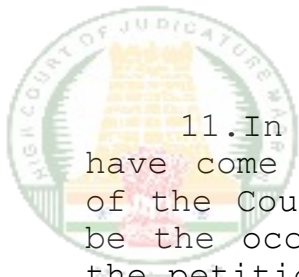
6.The petitioners' case is that the second petitioner borrowed a sum of Rs.30,000/- on 18.09.2012 from the defacto complainant and as a security, the second petitioner has issued a blank cheque with his signature and the first petitioner as they were having a joint account, that one Girahadurai, S/o.Samuthirakani, residing at D.No.240, V.O.C.Nagar, Srivilliputhur, witnessed the said transaction directly and that examination of the said Girahadurai is very much necessary to prove their case.

7.The respondent has raised serious objections through his counter statement and whereunder, he has stated that the petitioners have not stated anything about the said Girahadurai prior to the filing of the application under Section 243(2) of Cr.P.C, that it is only an after thought and that the above petition was filed only to drag on the proceedings.

8.The learned Judicial Magistrate, after conducting enquiry, has passed the impugned order dated 09.01.2017, dismissing the said application. Aggrieved by the said order, the petitioners have come forward with the present revision petition.

9.Whether the order of the Judicial Magistrate passed in Cr.M.P.No.41 of 2017 in C.C.No.32 of 2015, dated 09.01.2017, is liable to be set aside? is the point for consideration.

10.It is pertinent to note that the Fair trial includes fair and proper opportunities allowed by law to prove his case and adducing evidence in support of the defence is a valuable right and that denial of that right means denial of fair trial. Section 243 (2) of Cr.P.C authorises the defence to make an application for the summoning of its witnesses and imposes the duty upon the Court to summon such witnesses and the Court cannot avoid its duty unless it considers that such application should be refused for any of the reasons specified in the sub Section. It is for the Court to decide as to whether the application of the accused for summoning the evidence in defence is bonafide or malafide with an intention to delay or drag on the trial.



11. In the case on hand, as already pointed out, the petitioners have come forward with the present application, seeking permission of the Court for summoning and examining one Girahadurai alleged to be the occurrence witness for the transaction that existed between the petitioners and the complainant.

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12. It is the specific contention of the respondent that the alleged presence of Girahadurai at the time of transactions was not at all raised, while the defence evidence was examined. It is not the specific case of the petitioners that they have sent suitable reply notice to the statutory notice issued by the complainant and wherein they have raised the above plea. As rightly contended by the respondent side, the petitioners have nowhere whispered about the presence of the said Girahadurai at the time of transactions that were existing between the petitioners and the respondent.

13. It is pertinent to mention that the petitioners have previously filed another application under Section 243(2) Cr.P.C and obtained permission for examining the defence witness and even at that time, they have not stated about the proposed witness Girahadurai. As rightly contended by the respondent side, when the complainant was cross examined, he was not cross-examined with respect to the presence of Girahadurai at the time of transaction and not even a suggestion was made in this regard.

14. It is pertinent to note that the complaint was filed in the year 2015, that the petitioner's earlier application for summoning and examining the Indian Bank Manager was allowed in the year 2016, and that when the defence evidence is in part-heard stage, they have come forward with the above application in the year 2017. As rightly argued by the learned counsel for the complainant, if permission is granted for examining the proposed witness, then, the petitioners would approach the Court concerned again and again seeking permission to examine more witness alleging that they had also witnessed some transaction.

15. On considering the entire facts and circumstances, the finding of the learned Magistrate that the petitioners as an after thought, have come forward with the above application only to drag on the proceedings, cannot be found fault with and this Court is in entire agreement with the findings recorded by him. Hence this Court concludes that the revision, which is devoid of merits, is liable to be dismissed.

16. Considering the fact that the case is pending from the year 2015 onwards, the learned Magistrate is to be directed to dispose of the case within a period of three months from the date of receipt of a copy of this order and both parties are to be directed to extend their fullest cooperation for disposal of the case within the time stipulated and the above point is answered accordingly.



17.In the result, this Criminal Revision Case is dismissed and the order passed in Cr.M.P.No.41 of 2017 in C.C.No.32 of 2015 on the file of the learned Judicial Magistrate, (Fast Track Court), Srivilliputhur, Virudhunagr District, dated 09.01.2017 is confirmed. The learned Magistrate is directed to dispose of the case within a period of three months from the date of receipt of a copy of this order and both parties are directed to extend their fullest cooperation for disposal of the case within the time stipulated. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (W)

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Sub Assistant Registrar(CS)

To

1.The Judicial Magistrate, (Fast Track Court),
Srivilliputhur, Virudhunagr District.

2.The Section Officer, (2C)
Criminal Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.G.GOMATHI SANKAR, Advocate (SR-6287[F] dated
19/02/2021)

+1 CC to M/s.M.SANKAR, Advocate (SR-6562[F] dated 22/02/2021)

CRL.R.C. (MD).No.210 of 2017
and
CRL.M.P. (MD)No.1846 of 2017
19.02.2021

SJ(CO)
KB(03.03.2021) 4P 6C