



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.03.2021

CORAM :

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

Crl.OP.(MD)Nos.18902 & 18916 of 2019

and

Crl.M.P.(MD)Nos.774, 775, 11112 & 11114 of 2019

WEB COPY

P.Raja Samuel ... Petitioner in both petitions
Vs.
Esakki ... Respondent in both petitions

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, to set aside the Orders dated 14.10.2019 passed in Cr.M.P.Nos.7403 and 8657 of 2019 in C.A.No.125 of 2018 by the III Additional District and Sessions Judge, Tirunelveli.

For Petitioner : Mr.N.Dilip Kumar
For Respondent : Mr.A.P.Muthu pandi

COMMON ORDER

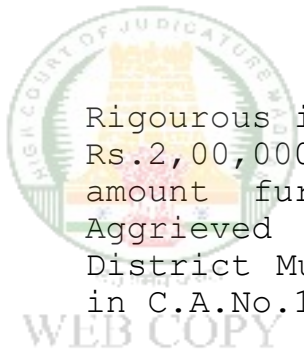
These petitions have been filed to set aside the Orders, dated 14.10.2019, passed by the III Additional District and Sessions Judge, Tirunelveli, in Cr.M.P.Nos.7403 and 8657 of 2019 in C.A.No.125 of 2018.

2. The petitioner is the accused in C.A.No.125 of 2018, on the file of the III Additional District and Sessions Judge, Tirunelveli and the accused in STC.No.2255 of 2011, on the file of the District Munsif cum Judicial Magistrate, Cheranmahadevi.

3.The petitioner was prosecuted for the offence punishable under Section 138 of the Negotiable Instruments Act, upon a complaint instituted by the respondent. The main defence of the petitioner / accused during trial and questioning under Section 313 (1) (b) of the Code of Criminal Procedure was that the cheque in question was not issued by the petitioner to the respondent / complainant and that there was no financial transaction between the petitioner and the respondent as claimed in the complaint and in the evidence of the complainant.

4.According to the petitioner / accused, the complaint was lodged at the behest of one usurious money lender K.R.P.Elango, who is arrayed as an accused in the final report in C.C.No.177 of 2012, on the file of the Judicial Magistrate No.I.Tirunelveli.

5.According to the petitioner, the said final report was filed based on the complaint preferred by him before the Inspector of Police, Perumalpuram Police Station, on 12.07.2010. However, the Trial Court found the present petitioner guilty of the offence punishable under Section 138 of Negotiable Instruments Act and convicted the present petitioner. He was also sentenced to undergo



Rigorous imprisonment for a period of one year and to pay a fine of Rs.2,00,000/- to the respondent and in default to pay the fine amount further to undergo Simple Imprisonment for one month. Aggrieved over the conviction and the sentence passed by the District Munsif cum Judicial Magistrate, Cheranmahadevi, the appeal in C.A.No.125 of 2018 is filed.

6.During the pendency of appeal in C.A.No.125 of 2018, the petitioner filed an application under Section 391 read with 91 of the Code of Criminal Procedure, for the purpose of adducing additional evidence by summoning certain documents and for examining witnesses mentioned in the said petition. The III Additional District Judge, Thirunelveli, vide his orders, dated 14.10.2019 dismissed the said petition on the following grounds:

1.Since the core issue to be decided in this case is as to whether the cheque in question was issued by the petitioner to the respondent / complainant towards discharging his existing legally enforceable liability or not, the examination of the Banker with regard to closure of the petitioner's account during the relevant period is not necessary as due to march of law, it is settled that even if the cheque issued by the drawer happened to be dishonoured on the ground that "account closed", still a prosecution under Section 138 of Negotiable Instruments Act, is very much maintainable. Therefore, the examination of the Banker of the petitioner is not at all necessary for a just decision of the present appeal.

2)The statement of accounts of the respondent maintained with his Banker is also not necessary since, neither in the complaint nor the complainant while tendering evidence had claimed that money was lent by him to the petitioner by drawing money from the bank and on the contrary, he has categorically asserted that with the cash in hand possessed by him, he advanced the loan to the petitioner.

3.The statutory notice, dated 09.11.2011 was served upon the petitioner and it is not disputed by him and therefore, examination of Postal Officials is not necessary.

4.The petitioner filed a similar application before the Trial Court and the same was dismissed, as against which the petitioner preferred an appeal in Crl.R.C. (MD)No.637 of 2016, which was also dismissed by this Court on 16.03.2018. Therefore, he cannot file another application before the Appellate Court.

7.Mr.N.Dilip Kumar, learned counsel for the petitioner contended that the Crl.R.C.No.637 of 2016 filed by the petitioner was dismissed for non-prosecution and that a restoration petition was filed by the petitioner and the same is still pending. He also



relied on the following decisions :

- 1) P.Thangavelu Vs.Venkatesan - (2018(2) MWN (Criminal) DCC 81 (Madras)
- 2.Kalyani Baskar Vs. M.S.Sampoornam - (2007) 1 Supreme Court Cases (Criminal) 577
- 3.T.Nagappa Vs. Y.R.Muralidhar - (2008) 5 Supreme Court Cases 633

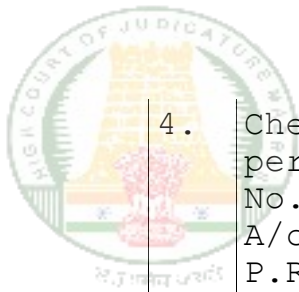
and contended that

- a) When a contention has been raised that the complainant has misused the cheque, an opportunity must be granted to the accused for adducing evidence to rebut the presumption raised under Section 118 of Negotiable Instruments Act.
- b) While dealing with an appeal, the Appellate Court, if thinks that additional evidence is absolutely necessary, can either take such evidence itself or it direct it to be taken by a Magistrate.
- c) The nature of evidence is not a matter to be decided by the Appellate Court and it is the accused, who knows how to prove his defence.

8.The specific contention of the learned counsel for the petitioner is that since he has to rebut the evidence adduced on the side of the complainant, he must be given an opportunity to putforth his contentions and therefore, prayed for setting aside the orders of the III Additional District and Sessions Judge, Tirunelveli, passed in Cr.M.P.Nos.7403 and 8657 of 2019 in C.A.No.125 of 2018.

9.The following are the list of documents and witnesses in Cr.M.P.No.7403 of 2019, in which the petitioner rely on :

	Documents	By whom to be furnished and proved
1.	Entire document pertaining to complaint before the Commissioner of Police in C.No.107/Camp/cop/ptn/tin-c/2010, dated 30.03.2010 and its enquiry report	The Commissioner of Police, Tirunelveli
2.	Case Diary (CD file) pertaining to Cr.No.346 of 2010 Perumalpuram Police Station	The Inspector of Police, Perumalpuram Police Station
3.	Requisition letter dated 30.03.2010 to stop payment of cheques and requisition letter dated 30.11.2020 to close the account of pertaining to account of P.Rajasamuel A/c. No.613501514466	The Manager I.C.I.C.I Bank, Tirunelveli Junction Branch.



4.	Cheque book issue register pertaining to cheque No.9000080, A/c.No.613501514466 of P.Rajasamuel	The Manager I.C.I.C.I Bank, Tirunelveli Junction Branch.
5.	Statement account of pertaining to account of Esakki A/c.No.2201160825 from 01.01.2011 to 31.12.2021	The Manager, Central Bank of India, Mukkudal Branch
6.	----	The Post Man, MuKkudal Post Office

10.It is true that Section 391 of the Code of Criminal Procedure confers power upon the Appellate Court to permit additional evidence to be taken. As rightly pointed out by the III Additional District and Sessions Judge, Tirunelveli, summoning of the letter of the petitioner, dated 30.03.2010 requesting the Manager, ICICI Bank, Tirunelveli Junction Branch, to stop payment of cheques and the Bank account maintained by him in Savings Account No.613501514466, are not at all necessary for the just decision of the appeal in C.A.No.125 of 2018, since even if the cheque issued by the petitioner happened to be dishonoured on the ground that "account closed", a prosecution under Section 138 of the Negotiable Instruments Act, is still maintainable. Similarly, summoning CD case diary file in Crime No.346 of 2010 of Perumalpuram Police Station would not be of any use to the present petitioner. Based on the complaint lodged by the present petitioner, one K.R.P.Elango, has been prosecuted and the mere contention of the present petitioner is that only at the behest of K.R.P.Elango, the respondent /complainant filed a complaint cannot be accepted, in the absence of sufficient proof. Moreover, this aspect was considered and rejected by the Trial Court vide his Judgment, dated 16.03.2018.

11. It is also relevant to extract Section 20 of Negotiable Instruments Act, which reads as follows :

"20. Inchoate stamped instruments.—Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in 1 [India], and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount: provided that no person other than a holder in due course shall recover from the person delivering the instrument



anything in excess of the amount intended by him to be paid thereunder."

12. The examination of the Post Man, Mukkudal Post Office, is not necessary for the present case. Since it is not the case of the petitioner that he did not receive any statutory notice, dated 09.11.2011. It is also to be pointed out that a similar petition was filed before the Trial Court and the same was dismissed on merits and the revision in Crl.R.C.(MD)No.637 of 2016, before this Court, was also dismissed. Infact, the III Additional District Judge, Tirunelveli, has passed a well considered order, and I do not find any reason to interfere with the same.

13. In the result, these Criminal Original Petitions are dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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.

To

The III Additional District and Sessions Judge,
Tirunelveli.

+2CC TO N.DILIPKUMAR, ADVOCATE, SR NO13085,13086

Crl.OP.(MD)Nos.18902 & 18916 of 2019
22.03.2021

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