



Crl.R.C.No.1358 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2022

CORAM:

**THE HON'BLE MR.JUSTICE P.VELMURUGAN**

Crl.R.C.No.1358 of 2022

P.S.Subramanian

...Petitioner

..VS..

S.Thannammal

... Respondent

Criminal Revision Case filed under Sections 397 r/w 401 Cr.P.C to call for the records pertaining to the order dated 05.07.2022 passed in Crl.M.P.No.6333 of 2021 in C.A.No.329 of 2019 on the file of the XVII Additional Sessions Judge, City Civil Court, Chennai and to set aside the same.

For Petitioner : Mr.L.Prabahhar

**ORDER**

This revision has been preferred challenging the order dated 05.07.2022 passed in Crl.M.P.No.6333 of 2021 in C.A.No.329 of 2019 by the learned XVII Additional Sessions Judge, City Civil Court, Chennai.

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2. Heard the learned counsel for the petitioner and perused the materials available on record.

3.The petitioner is the accused, against whom, the respondent/complainant filed a private complaint in C.C.No.552 of 2017 before the learned XIII Metropolitan Magistrate, Egmore, Chennai. After trial, the learned Magistrate found that the petitioner is guilty of the offence under Section 138 of The Negotiable Instruments Act, 1881 [hereinafter referred to as 'N.I.Act' for the sake of convenience] and convicted and sentenced the petitioner to undergo simple imprisonment for a period of one year and also directed to pay a sum of Rs.3,22,000/- as compensation. Challenging the said order, the petitioner/accused preferred an appeal in Crl.A.No.329 of 2019 before the learned Principal Sessions Judge, Chennai and same was made over to the learned XVII Assistant Sessions Judge, Chennai. Subsequently, respondent/complainant also filed a suit in O.S.No.3256 of 2019 against the petitioner/accused for recovery of a sum of Rs.5,22,000/- along with interest at the rate of 18% p.a. During the pendency of the appeal, the



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petitioner/accused filed a petition in Crl.M.P.No.6333 of 2021 seeking to re-call the complainant for cross examination and the said petition was dismissed. Aggrieved by the same, the petitioner has preferred the present revision.

4.The learned counsel for the petitioner/accused submitted that the petitioner never borrowed any alleged amount from the respondent, however, the respondent obtained cheques from the petitioner by force and coercion. The respondent/complainant filed a suit for recovery of money and the amount mentioned in the suit, notice and complaint are different. For the same transaction, the respondent/complainant taken different stands in different stages, which itself clearly shows that the complainant is not a genuine person and has not approached the Court with clean hands. The petitioner has filed the miscellaneous petition under Section 391 Crl.P.C before the Court below to permit him to mark the document as defence side evidence and also to re-call the complainant and cross examine on that point. However, the trial Court



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without considering the facts, dismissed the petition, which warrants interference.

5. The petitioner has admitted the execution of the cheque, but the only defence taken by the petitioner is that the cheque was not issued towards discharge of legally enforceable debt. The respondent/complainant by coercion and force obtained the cheques from the petitioner and that defence was not substantiated by the petitioner before the trial Court. The learned Magistrate draw the statutory presumption under Section 139 of N.I.Act, then it is for the petitioner to rebut the presumption in the manner known to law. The petitioner has not given any reply or he has not extensively cross examined the respondent, when the respondent himself examined as P.W.1. Further, the petitioner did not put any suggestion before the complainant during cross examination that by force and coercion the respondent obtained cheque and he has not disclosed that whether he preferred any complaint for the same. Therefore the trial Court convicted the petitioner. Against the conviction,



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the petitioner filed an appeal, in which, he has filed the petition under Section 391 Cr.P.C. to allow him to mark some piece of document, which according to the petitioner, obtained after the conviction, and to cross examine the respondent/complainant. The Sessions Court, dismissed the same, observing that without any such defence, before trial Court, during cross examination of the respondent/complainant, only at the time of appeal, the he has introduced new facts, which cannot be accepted.

6. Therefore the petitioner/accused, in order to fill up the lacuna, has filed the petition under Section 391 Cr.P.C, which is only after taught, since he has not taken such defence either by sending reply notice or during cross examination of the respondent/complainant during trial. Therefore, this Court does not find any grounds to interfere with the order of the Court below and this revision is devoid of merits.

7. In view of the above, this Criminal Revision Case is dismissed and the order dated 05.07.2022 passed in Crl.M.P.No.6333 of 2021 in C.A.No.329 of 2019 by the learned XVII Additional Sessions Judge, City



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Civil Court, Chennai is confirmed. However, the petitioner is at liberty to take all his defence in the suit.

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Speaking Order/Non-Speaking Order  
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To

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**P.VELMURUGAN, J.**

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