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Crl.R.C.No.1496 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2022

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Crl.R.C.No.1496 of 2022

and

Crl.M.P.No.17222 of 2022

A.Saravanan
S/o, K.Arumugam
Partner of M/s.SVS Aqua Products,
B-1, Annamalai Homes, Phase II,
Jaswanth Nagar, Mogappair West,
Chennai 600 037.

... Petitioner

Vs.

V.Shivakumar,
Partner, M/s.Image Aqua Farms,
B/1, Indra Arcade,
No.49, C Block, 9th Street,
Shenoy Nagar, Chennai 600 030.

... Respondent

Prayer:Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C., to call for the records in respect of the impugned order dated 14.09.2022 on the file of the II Additional District and Sessions Court, Tiruvallur at Poonamallee in C.M.P.No.77 of 2022 in C.A.No.173 of 2018 and set aside the same.

For Petitioner : Mr.A.Thirumaran



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ORDER

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This Criminal Revision Case has been filed against the order dated 14.09.2022 passed in C.M.P.No.77 of 2022 in C.A.No.173 of 2018 on the file of the II Additional District and Sessions Court, Tiruvallur at Poonamallee.

2. Petitioner is the complainant and respondent is the accused. Petitioner filed a private complaint against the respondent under Section 200 Cr.P.C., for the offence under Section 138 of the Negotiable Instruments Act before the Judicial Magistrate, Fast Track Court (Magisterial Level), Ambattur. The learned Magistrate found the respondent guilty for the offence under Section 138 of the Negotiable Instruments Act and convicted him. Challenging the conviction and sentence passed by the learned Magistrate, the respondent/accused has filed the Criminal Appeal No.173 of 2018 before the District and Sessions Court, Tiruvallur at Poonamallee. Pending Appeal, respondent herein has filed a petition under Section 391 Cr.P.C., to examine the Bank Manager as additional evidence in order to establish that the account stands in the name of proprietorship firm or

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partnership firm and the said petition was allowed. Aggrieved over the same, now the petitioner/complainant has filed the present Criminal Revision Case before this Court.

3. Learned counsel for the petitioner would submit that the learned Magistrate rightly appreciated the evidence and convicted the accused. Challenging the order of conviction, the respondent/accused filed the Criminal Appeal No.173 of 2018 before the District and Sessions Court, Tiruvallur at Poonamallee. Pending Appeal, respondent herein has filed a petition under Section 391 Cr.P.C., to examine the Bank Manager as additional evidence, which is not necessary. He would further submit that earlier, the respondent has filed similar application before the Judicial Magistrate, Fast Track Magisterial Level, Ambattur and the same was dismissed. Challenging the dismissal order passed by the learned Magistrate, the respondent filed Crl.O.P.No.6753 of 2017 before this Court. During the pendency of the Criminal Original Petition, the case was proceeded and subsequently, Criminal Original Petition was dismissed as infructuous. He has produced document in Page No.1 and it shows that it is a partnership



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firm, and it is not necessary to examine the Bank Manager to establish that the account stands in the name of proprietorship firm or partnership firm.

The Appellate Court failed to consider the scope of Section 391 Cr.P.C., and mechanically allowed the petition filed by the respondent, which warrants interference.

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

5. Admittedly, the petitioner is the complainant, who filed a private complaint against the respondent under Section 200 Cr.P.C., for the offence under Section 138 of the Negotiable Instruments Act. Aggrieved over the order of conviction, the respondent has filed an appeal before the II Additional District and Sessions Judge, Tiruvallur at Poonamallee. During the pendency of appeal, the respondent has filed petition under Section 391 Cr.P.C., to examine the Bank Manager as additional evidence and the same was allowed. Mere examining the Bank Manager as additional evidence would not cause any prejudice to the Revision Petitioner.



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6. Therefore, under the facts and circumstances of this case, this Court does not find any perversity in the order passed by the learned Sessions Judge and there is no merit in the Revision Case and the same is liable to be dismissed. Accordingly, the Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition, is closed. Since the Criminal Appeal No.173 of 2018 is pending from 2018, the learned Appellate Judge is directed to complete the examination of additional evidence within 15 days and dispose the Criminal Appeal within one month from the date of receipt of copy of this Order.

16.11.2022

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Index:yes/No
Internet:yes/No

Note: Issue Order Copy on 18.11.2022

To

1. The II Additional District and Sessions Court, Tiruvallur at Poonamallee.

P.VELMURUGAN, J.

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