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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2022

CORAM:

THE HONOURABLE MR. JUSTICE **V.SIVAGNANAM**

Crl.O.P.(MD) Nos.9445 and 9967 of 2022 and

Crl.M.P(MD).No.6115 and 6277 of 2022

M/s. Mariyapa Thevar Proprietor,
Thevar Modern Rice Mill,
1, Subramaniyapuram 2nd Main Street,
Madurai – 625 011. ...Petitioner in both Crl.O.P

Vs.

M/s. Sakthi Saravanan, ...Respondent in both Crl.O.P.

COMMON PRAYER : Criminal Original Petitions filed under Section 482 Cr.P.C. to call for the records pertaining to the order in Cr.M.P.Nos.4637 and 4638 of 2021 in STC.No.421 of 2013, dated 22.04.2022 passed by the Judicial Magistrate, Fast Track Court No.I, Madurai and set aside the same.

For Petitioner in both Crl.O.P. : Mr. K.C. Maniyarasu

For Respondent in both Crl.O.P.: Mr.M. Ponniah

COMMON ORDER

These Criminal Original Petitions have been filed to call for the records pertaining to the order passed in Cr.M.P.Nos.4637 and 4638 of 2021 in STC.No.421 of 2013, dated 22.04.2022 by the Judicial Magistrate, Fast Track Court No.I, Madurai and set aside the same.

2. The learned counsel appearing for the petitioner submitted that the petitioner is the accused in S.T.C.No.421 of 2013 on the file of the Judicial Magistrate, Fast Track Court No.I, Madurai. The respondent filed a complaint against the petitioner / accused for the offence under Section 138 of Negotiable Instruments Act on 05.03.2019. After cross examination of PW.1, the defence side evidence was closed on 05.03.2021 and thereafter, the case was posted for advance the arguments on 08.03.2021. On 18.03.2021 the respondent / complainant advanced his arguments and the case was posted for petitioner side arguments on 19.03.2021 and the accused

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argued the case on 26.03.2021. The respondent / complainant has filed written arguments and posted for oral arguments on 30.03.2021. On that date, the respondent has filed a petition to recall and reopen the evidence of PW.1. Belatedly, after the cross examination, the complainant has filed the said petitioners only to fill up the lacuna. In this case, the respondent want to reopen and recall the evidence of PW.1 and to file an additional document that cannot be permitted. But, the trial Court has allowed the petitions on the ground that the opportunity may be given to cross examine the witnesses and for filing the additional documents.

3. The learned counsel appearing for the respondent submitted that admittedly, the complainant filed a case against the accused / petitioner under Section 138 of Negotiable Instruments Act. During the cross examination, the accused disputed the transaction between the complainant and the accused with regard to the issuance of the disputed cheque. To prove the transaction between the respondent / complainant and the accused, the complainant wanted to allow the applications and the impugned order passed by trial Court is legally sustainable and there is no ground to dismiss the said petitions.

4. On perusal of the records, reveals that un disputedly, the petitioner is an accused in STC.No. 421 of 2013 on the file of the Judicial Magistrate No. I, Fast Track Court, Madurai. He is challenging the case filed against him under Section 138 of Negotiable Instruments Act. The complainant was cross examined on 05.03.2019 and the defence side evidence was closed on 05.03.2021. Dispute between the petitioner and the respondent is with regard to the issuance of the cheque for the amount of Rs.3,00,000/-, that cheque was dishonored. Hence, the complaint was filed. During the cross examination of the complainant, the transaction between and the complainant and the accused is disputed. Under these circumstances, this complainant has filed an applications to recall and reopen the evidence of PW.1 and the case was posted for arguments to produce the additional documents and to produce the evidence to show that the transaction between the complainant and the accused. In the Negotiable Instruments Act, under Section 138 IPC, the transaction between the complainant and the accused has to be proved. Without proving the transaction between the complainant and the accused, the case cannot be fully adjudicated. In order to give an opportunity to the complainant to place the documents, with regard to the transaction between the complainant and the accused and to adjudicate the matter fully and to arrive justification, an opportunity has to be given to the complainant to produce the additional evidence. Therefore, the trial Court has allowed the petitions to recall and reopen with the cost of Rs.1,000/-.

5. I find no error in the order passed by the the trial Court and there is no reason to interfere with order passed by the

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trial Court. Hence, the Criminal Original Petitions are dismissed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/06/2022

Sub Assistant Registrar(CS)

trp

To

The Judicial Magistrate,
Fast Track Court No.I, Madurai.

+1 CC to M/s.M. PONNIAH, Advocate (SR-27202[F] dated 21/06/2022)

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RD(29.06.2022) 3P 3C

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