



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.04.2022

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.954 of 2021

and Crl.M.P(MD)No.11521 of 2021

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S.M.D.Mohamed Abdul Khader

... Petitioner/Accused

Vs.

Muniswari,
Through her power agent,
Ramesh,
Palkkarai Village,
R.S.Madai Post,
Ramanathapuram District.

... Respondent/Complainant

PRAYER: Criminal Revision Case filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the records relating to the order passed by the learned Judicial Magistrate No.I, Ramanathapuram in Crl.M.P.No.7611 of 2019 in S.T.C.No.8 of 2018 dated 23.11.2021 set aside the same.

For Petitioner

: Mr.A.Sirajudeen
Senior Counsel
for Mr.M.Subash Babu

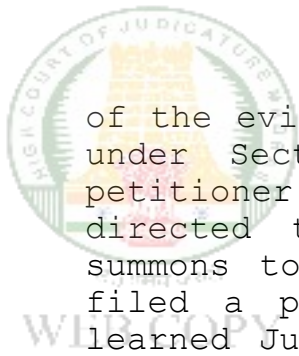
For Respondent

: Mr.B.Prahalad Ravi

ORDER

This revision has been filed to set aside the order passed in Crl.M.P.No.7611 of 2019 in S.T.C.No.8 of 2018 dated 23.11.2021 on the file of the learned Judicial Magistrate No.I, Ramanathapuram, thereby dismissed the petition filed under Section 243 of Cr.P.C to issue witness summons to the witnesses enumerated in the list of witnesses.

2.The petitioner is an accused and the respondent is the complainant. The respondent lodged a complaint for the offence punishable under Section 138 of the Negotiable Instruments Act, alleging that the petitioner had borrowed a sum of Rs.8,00,000/- as a hand loan on 21.08.2016. In order to repay the same, the petitioner issued cheque for a sum of Rs.8,00,000/- and the same was presented for collection. However, it was dishonoured for the reason that 'account closed'. After causing legal notice as contemplated under Section 138 of the Negotiable Instruments Act, the petitioner filed the complaint and the same has been taken on the file of the learned Judicial Magistrate No.I, Ramanathapuram. After completion



of the evidence of the complainant, the petitioner made a statement under Section 313 of Cr.P.C and specifically stated that the petitioner has evidence on his side. However, the Court below directed the petitioner to file appropriate petition to issue summons to the list of the witnesses. Accordingly, the petitioner filed a petition in Cr.M.P.No.7611 of 2019 on the file of the learned Judicial Magistrate No.I, Ramanathapuram under Section 243 of Cr.P.C along with the following list of witnesses, which was dismissed by the trial Court:-

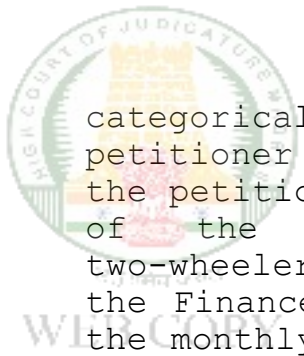
Sl. No.	Name and address of the witness	Nature of evidence
1.	Mr.Sahabudeen, Auditor, M/s.Jaleel & Co., 120, Vepery High Road, Chennai - 600 007.	To bring the documents and records relating to the income and asset of the accused and his family members and depose about the financial status of the accused and his family members.
2.	Mrs.Muniswari, W/o.Mr.Ramesh, Ex.Panchayat, President, Palakkarai Village, Ramnad Taluk.	To bring the documents relating to her land holdings, bank passbook of all her bank accounts for the period from 01.01.2015 till 01.01.2019, family ration card, application given by her to the Schools to admit her wards in those Schools.
3.	Mr.Sathish, Brother of Muneswari, Palakkarai Village, Ramnad Taluk.	To depose about his acquaintance with the accused, details about his relationship and dealings with the complainant.
4.	The Manager, Sriram City Union, Finance Limited, 409, KTM Salma Centre, 1 st Floor, Vandikara Street, Ramanathapuram - 623 501.	To bring the loan application submitted by the complainant for hire purchase of the two wheeler bearing Registration No.TN-65-R-7750 and also the copy of the statement of account of that loan account and depose about the same.
5.	The District Collector, Ramanathapuram District, Ramanathapuram.	To produce and depose about the affidavit submitted by the complainant regarding her assets and liabilities at the time of submission of her nomination in the last local body election held in October, 2011 for the post of President of R.S.Madai Panchayat.



6.	The Manager, State Bank of India, Ramanathapuram Branch, Ramanathapuram.	To produce and depose about the statement of account of the complainant bearing SB Account No.10776860254 for the period commencing from 01.01.2015 till 01.01.2019.
7.	The Manager, Indian Bank, Ramanathapuram Branch, Ramanathapuram.	To produce and depose about the statement of account of the complainant bearing SB Account No.6136583110 for the period commencing from 01.01.2015 till 01.01.2019.
8.	The Tahsildar, Ramanathapuram Taluk, Ramanathapuram.	To bring the records relating to the issue of family ration card to the complainant showing the details of occupation and her family members and depose about the same.

3.The respondent filed a counter-affidavit and revealed that the list of witnesses side is the Auditor to bring the documents and records relating to the income and asset of the accused and his family members and depose about the financial status of the accused and his family members. He is no way connected with the income of the complainant. Further, the second witness is the defacto complainant and there is absolutely no provision to examine the defacto complainant on the side of the defence side. The District Collector and Tahsildar are not at all required to be examined since the documents which are relied upon by the petitioner are private documents. Therefore, the petition has been filed only to drag on the proceedings and nothing else.

4.The learned Senior Counsel appearing for the petitioner vehemently contended that on receipt of the statutory notice, dated 18.03.2017 issued under Section 138 of the Negotiable Instruments Act, the petitioner had sent reply notice, dated 07.04.2017 and specifically stated that the petitioner belongs to a highly rich and reputed family and he is one of the trustees in Mohamed Sathak Trust which runs 18 educational institutions in Tamil Nadu and his monthly rental income itself exceeds many lakhs. Therefore, he had no necessity to borrow any money that too from the respondent herein. Further, revealed that the respondent is only a name lender and the main person behind this offence is one Seyed Jawwad. Further, the respondent had no source of money to lend such a huge amount. Therefore, to rebut the evidence of the respondent, the petitioner necessarily has to examine the witnesses to disprove the case of the respondent. He further submitted that the petitioner has right to led his defence evidence by examining witnesses and the respondent has no right to object it except on the ground of vexatious. Further, he pointed out that in the cross-examination of P.W.1, he

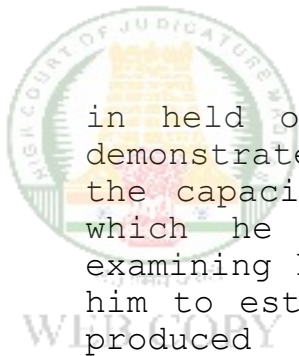


categorically admitted that one Sathish, who introduced the petitioner to the respondent to borrow the loan, is the employee of the petitioner herein. Further, P.W.1 is none other than the husband of the respondent and he categorically admitted that two-wheeler bearing Registration No.TN-65-R-7750 was purchased from the Finance Limited, namely Sri Ram City Union Finance Limited for the monthly installment for the period of two years. Therefore, the petitioner necessarily has to examine the person, who lend loan to the respondent herein to hold that the respondent has no source of income to lend such a huge sum of Rs.8,00,000/-. He further pointed out that the respondent has absolutely no source of income, hence, she contested local body election which was held in the month of October, 2011 and she filed affidavit stating the assets and liabilities at the time of submission of her nomination. Therefore, it shows her assets and source of income. Further, the respondent had account in the State Bank of India and the Indian Bank, in which she had only minimum balance and in order to prove the same, the petitioner wanted to examine those Managers.

5.Heard the learned Senior Counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

6.On a perusal of the materials available on record, for the offence under Section 138 of the Negotiable Instruments Act, the accused can rebut the evidence of the respondent by cross-examination, by examining witnesses on the side of the petitioner and produce materials and documents to rebut the evidence of the respondent to disprove the case of the respondent. In the case on hand, the petitioner had taken a specific stand that the respondent had no source of income to lend such a huge sum of Rs.8,00,000/- to the petitioner herein, when the petitioner is highly a rich person and he had asset and income and as such, the petitioner no need to borrow any money from the respondent herein.

7.The Honourable Supreme Court of India held that when the accused had taken specific stand that the complainant had no source of income to lend such a huge sum, the accused can very well prove the same by cross-examination, witnesses and materials. In this regard, the Honourable Supreme Court of India recently in ***Crl.A.No.362 of 2022, dated 07.03.2022 (Tedhi Singh Vs. Narayan Dass Mahant)*** held that in the case under Section 138 of the Negotiable Instruments Act, the complainant need not show the first instance that he had capacity to lend the loan. The proceedings under Section 138 of the Negotiable Instruments Act is not a civil suit. At the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity. To that extent, the Courts were right



in held on those lines. However, the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable which he can do by producing independent material namely by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, achieve this result through the cross-examination of the witnesses of the complainant. Ultimately it becomes the duty of the Courts to consider carefully and appreciate the totality of the evidence and then, come to a conclusion whether in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence.

8.In view of the above, the petitioner can very well examine his side witnesses to disprove the case of the respondent herein. Accordingly, the order passed in Crl.M.P.No.7611 of 2019 in S.T.C.No.8 of 2018, dated 23.11.2021 on the file of the learned Judicial Magistrate No.I, Ramanathapuram is set aside and this Criminal Revision Case is allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Writs)

// True Copy //

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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 Judicial Magistrate No.I,
Ramanathapuram.

Copy to

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

<https://hcservices.ecourts.gov.in/hcservices/>



+1 CC to M/s.B. PRAHALAD RAVI, Advocate (SR-19106[F] dated 18/04/2022)

+1 CC to M/s.M. SUBASH BABU, Advocate (SR-19527[F] dated 19/04/2022)

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Cr1.R.C (MD) No. 954 of 2021
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