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Crl RC .No.101 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl RC No.101 of 2018

Umapathi

..Petitioner /Respondent
Complainant

Vs.

S.Boopathi

..Respondent/Respondent/
Accused

Prayer: Criminal Revision case is filed under Section 397 (1) r/w 401 of Cr.PC to set-aside the order dated 17.10.2016 passed in Crl MP No.1599 of 2016 in CC No.65 of 2016 on the file of the Court of the Judicial Magistrate (Fast Track) at Dharmapuri District.

For Petitioner : Mr.R.Narayanan
for Mr.M.V.Krishnan

For Respondent : -----



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ORDER

This Criminal Revision case has been filed against the order passed by the Judicial Magistrate (Fast Track), Dharmapuri, in Crl MP No.1599 of 2016 in C.C.No.65 of 2016 dated 17.10.2016, directing the petitioner / complainant to produce the original agreement dated 11.05.2015 in order to mark the same as a document on the side of the respondent /accused.

2. The petitioner filed a private complaint against the respondent on the ground that the respondent had borrowed certain amount and towards, the said debt/liability, the subject cheque was issued. When this cheque was presented for collection, it was returned with an endorsement “insufficient funds”. A statutory notice was issued by the petitioner in this regard and since the cheque amount was not paid, the private complaint was filed by the petitioner against the respondent for an offence under



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Section 138 of the Negotiable Instruments Act.

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3. During the pendency of the complaint, the respondent filed a petition under Section 91 of Cr.PC directing the petitioner / complainant to produce the original agreement dated 11.05.2015 in order to rely upon the same as a defence document. This petition was contested by the petitioner on the ground that it is a fabricated document and that the petitioner does not have the original of this document and accordingly, the petitioner sought for the dismissal of the application.

4. The Court below on considering the rival contentions, passed an order on 17.10.2016 and directed the petitioner to produce the original agreement dated 11.05.2015. Aggrieved by the same, this Criminal Revision case has been filed before this Court.



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5. Heard Mr.R.Narayanan, learned counsel for the petitioner. Even though, several attempts were made to serve the respondent, the notice has not been served till date. However, this Court is of the view that final orders can be passed in this criminal revision case by safeguarding the interest of the petitioner and the respondent and hence, notice to the respondent can be dispensed with.

6. The short issue that is involved in the present criminal revision case is as to whether the Court below was right in insisting for the production of the original agreement dated 11.05.2015 by the petitioner, when the petitioner has taken a very specific stand that they do not have any original and that the copy that was produced before the Court was a fabricated document.



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7. The petitioner has filed the complaint on the ground that the respondent borrowed the money and towards the same, the cheque was issued and when the same was presented for collection, it was dishonoured with an endorsement “insufficient funds”. If the signature found in the cheque is admitted or there is no dispute with regard to the same, the statutory presumption under Section 139 of the Negotiable Instruments Act will go in favour of the petitioner. Hence, the respondent has to necessarily rebut the presumption failing which, the Court has to proceed further and convict the respondent under Section 138 of the Negotiable Instruments Act.

8. The respondent filed the petition on the ground that there is no direct nexus between the petitioner and the respondent regarding the educational trust transaction and the petitioner had entered into an agreement dated 11.05.2015 and expressed that he



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is not interested in continuing as a trust member and accordingly, he had sought for getting back the amount from the trust.

8. The learned counsel for the petitioner submitted that this document does not have any bearing on the claim made by the petitioner, since the respondent has borrowed the amount and had given the cheque and the so called agreement does not relate to the said transaction.

9. In the considered view of this Court, it is not necessary to go into the issue as to how the agreement dated 11.05.2015 is relevant for establishing the defence of the respondent. The only issue is as to whether the petitioner must be directed to produce the original agreement dated 11.05.2015. The petitioner has taken a very specific stand that he does not possess the original agreement. When such a stand is taken, no useful purpose will be



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served in issuing a direction to the petitioner.

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10. The only option that is left to the Court below is to make this so called agreement dated 11.05.2015 as one of the issue raised by the respondent and depending upon the stand taken by the parties and the evidence let in, a finding can be rendered by the Court below. There is no use in keeping the complaint in suspended animation for the last seven years, when the petitioner has taken a stand that he does not have the original agreement dated 11.05.2015. The tenability of the agreement dated 11.05.2015 and the specific stand taken by the petitioner in that regard, can be considered on merits while finally disposing of the complaint and the proceedings cannot be kept pending on this account.

11. It will be left open to both the parties to make their



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contentions / raise their grounds with regard to the so called agreement dated 11.05.2015 and the Court below will independently consider the same while disposing of the main complaint. Thereby, both the parties will have an opportunity to put forth their contentions in this regard.

12. In the light of the above discussion, this Criminal Revision case is disposed of with a direction to the Judicial Magistrate (Fast Track) at Dharmapuri District, to dispose of CC No.65 of 2016, within a period of three months from the date of receipt of a copy of this order on its own merits and in accordance with law. No costs.

16.03.2023

Internet : Yes
Index : Yes
Speaking Order / Non Speaking Order

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N. ANAND VENKATESH, J.

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To

The Judicial Magistrate (Fast Track) at Dharmapuri District

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