



Crl.R.C.No.363/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2023

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

CRL.R.C.NO.363 OF 2023

&

CrI.M.P.No.2866 of 2023

1. Maruthi Constructions,
represented by its
Managing Partner,
Sivakumar,
D.No.6/253, F1, Lakshmi Nagar,
Podupatti Post,
Namakkal and District.

2. Sivakumar

... Petitioners

-VS-

Kesavan

... Respondent

Prayer: Criminal Revision Petition filed under section 397 r/w.401 Cr.P.C.,to call for the records pertaining to CMP.No.30 of 2023 in C.C.No.272 of 2021 on the file of the learned Judicial Magistrate No.1, Namakkal and set aside the same.

For Petitioner : Mr. K.T.S.Sivakumar



Crl.R.C.No.363/2023

ORDER

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This Criminal Revision is filed challenging the order dated 19.01.2023 passed by the Judicial Magistrate No.1, Namakkal in CMP.No.30 of 2023 in C.C.No.272 of 2021 filed by the petitioner seeking permission to bring Special Chief Engineer, PWD, Vellore as defence witness and to produce related documents .

2. The learned counsel for the petitioner submitted that the respondent herein has filed a complaint against the petitioners/accused for the offence punishable under section 138 of Negotiable Instruments Act. In the said complaint, the respondent/ complainant alleged that the 2nd petitioner, who is representing the 1st petitioner company as its Managing Partner and the respondent were contractors. The respondent and the 2nd petitioner herein are respectively III class contractor and I class contractor under the PWD Department. At the request of the 2nd petitioner, the respondent executed some building construction works for Public Works Department and in respect of the said transaction, the 2nd petitioner issued a cheque on behalf of 1st respondent company as its Managing Partner, for a sum of Rs.36,00,000/- towards part



Crl.R.C.No.363/2023

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payment of the work done by the respondent on 30.09.2020. When the said cheque was presented for encashment, the same was returned with an endorsement 'Stop the cheque payment'. After issuing legal notice, the respondent initiated criminal proceedings against the petitioners by filing complaint in C.C.No.272 of 2021 before the Judicial Magistrate-1, Namakkal. Pending trial, the petitioners have filed a petition in C.M.P.No.30 of 2023 in C.C.No.272 of 2021, stating that the respondent/complainant, in his complaint has alleged that he has got sub-contract from the petitioners which was allotted to the petitioners by the Tamilnadu Public Works Department, and therefore, in order to prove that whether the petitioners/accused got contract from the PWD, he want to examine Special Chief Engineer, PWD, Vellore in his official capacity as defence witness to elicit the truth, but the trial court, after considering the statement of the learned counsel for the parties dismissed the petition, by passing the impugned order stating summoning the Special Chief Engineer, PWD, Buildings, (C&M) Circle, Vellore is irrelevant for deciding the issue before the trial court. Hence the same was challenged before this Court in the present criminal revision case.



Crl.R.C.No.363/2023

3. He further submitted that the witness of Special Chief Engineer, PWD Buildings is necessary to substantiate that whether the respondent is a sub contractor under the petitioner or not. Therefore, in the interest of justice, to depose PWD Engineer as defence side witness is necessary. Hence, he prayed for setting aside the impugned order and allow the petition seeking production of the abovesaid witness on respondent side.

4. On perusal of records, the fact reveals that the petitioners are accused in C.C.No.272 of 2022 on the file of Judicial Magistrate I, Namakkal. The respondent complainant filed a complaint under section 138 of Negotiable Instruments Act for dishonouring of cheque of Rs.36,00,000/-, dated 20.01.2021 bearing cheque No.284895 for Rs.36 lakhs. The allegation in the complaint is that the respondent and the 2nd petitioner herein are respectively III class and I class contractors under the PWD Department and the 2nd petitioner undertook to execute some building construction works on behalf of the Public Works Department on contractual basis. He, in turn, entrusted the same work to the respondent. Accordingly, the respondent executed the said work for him and for the execution of work, the 2nd petitioner has to pay a sum



Crl.R.C.No.363/2023

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of Rs1,00,13,500/-. Towards part payment of discharging that amount, the 2nd petitioner issued a cheque for Rs.36,00,000/- bearing Cheque No.284895, dated 30.09.2020 drawn on State Bank of India, Vasanthapuram Branch, Nagarajapuram, Namakkal, Since, it is dishonoured, the respondent filed the complaint against the petitioners under section 138 of Negotiable Instruments Act. Whether the respondent/complainant has executed any contract work on behalf of the 2nd petitioner/accused has to be proved by letting in evidence and documents by the respondent/accused. Therefore, seeking to summon Special Chief Engineer, PWD, Vellore, in order to prove the transactions occurred between the petitioners and the respondent as contractor and sub contractor is totally irrelevant to the issue before the Court. Therefore, the trial court rightly dismissed the petition seeking permission for summoning of PWD Chief Engineer, Vellore as a defence witness. I find no reason to interfere with the order passed by the court below.

5. In view of the foregoing reasons, the criminal revision case deserves to be dismissed and accordingly, it is hereby dismissed. Consequently, the connected miscellaneous petition is closed.



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Crl.R.C.No.363/2023

28.02.2023

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Index:Yes/No

Internet:Yes/No

To

The Judicial Magistrate No.1, Namakkal

V.SIVAGNANAM, J.



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Crl.R.C.No.363/2023

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Crl.R.C.No.363/2023

28.02.2023