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Crl.R.C.No.418 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2023

CORAM:

THE HONOURABLE MS JUSTICE R.N.MANJULA

Crl.R.C.No.418 of 2023 and
Crl.M.P.No.3172 of 2023

1. M/s.Raina Corporate Solutions,
Rep. By its Authorized signatory
P.Maharajan,
No.4, Justice Rathnavel Pandian Road,
Golden Georg Nagar, Nerkundram,
Chennai -107.

2. P.Maharajan

... Petitioners

Vs.

Yugendhar Babu Venugopal

... Respondent

Prayer: The Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C. to set aside the order dated 10.01.2023 made in Crl.M.P.No.16159 of 2021 in C.A.No.481 of 2018 on the file of the learned XXI Additional Sessions Judge, City Civil Court at Allikulam, Chennai by allowing this revision.

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

ORDER

This Criminal Revision has been preferred to set aside the order, dated 10.01.2023 made in Crl.M.P.No.16159 of 2021 in C.A.No.481 of 2018 on the file of the learned XXI Additional Sessions Judge, City Civil



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Court at Allikulam, Chennai.

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2. The petitioners are the accused in a complaint preferred by the respondent/complainant for the offence under Section 138 of the Negotiable Instruments Act and the same was taken on file in C.C.N.216 of 2013 on the file of the learned XIV Metropolitan Magistrate, Egmore, Chennai. After conclusion of trial, the petitioners were found guilty for the offence under Section 138 of the Negotiable Instruments Act and the learned XIV Metropolitan Magistrate, Egmore, Chennai convicted and sentenced the accused to undergo one year Simple Imprisonment and imposed a sum of Rs.1 Crore to be paid to the respondent / complainant as compensation. Aggrieved over the said order, dated 20.08.2018, the petitioners had preferred an appeal in C.A.No.481 of 2018. During the pendency of the appeal proceedings, the petitioners had preferred Crl.M.P.No.16159 of 2021 before the XXI Additional City Civil Judge cum sessions Judge, Chennai, seeking to receive additional evidence and the same was dismissed and against which, the present Revision has been preferred.

3. Heard the learned counsel for the petitioners and perused the



materials available on record.

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4. The learned counsel for the petitioners submitted that the respondent did not have any means to provide the alleged loan of Rs.50 lakhs. During Cross examination, the petitioners were unable to provide any valid particulars as to what is the necessity for the respondent to provide such a huge loan to the petitioners without security. Hence, the 2nd petitioner has to prove the financial resources of the respondent, by way of letting additional evidence.

5. By making the above submission, the petitioners more less required a retrial. Despite sufficient opportunities were given to the 2nd petitioner to adduce their evidence or to bring out the infirmities in the case of the respondent, he did not make use of the same. Nothing had prevented the petitioners from getting into the box and provide any materials to show that the respondent did not have sufficient means to lend the huge amount of Rs.50 laksh as stated by the respondent. Even in the present revision petition, the petitioner did not state about the evidence which is going to be



adduced and why he was not able to secure those materials at the time of trial.

6. Any order under Section 391 of Cr.P.C, to receive additional evidence can be filed only if the following criteria are found to be present.

For the sake of convenience, Section 391 of Cr.P.C. is extracted hereunder:

“391. Appellate Court may take further evidence or direct it to be taken:

(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be



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subject to the provisions of Chapter XXIII, as if it were an inquiry.”

7. The petitioner did not bring out any materials to show that he has got additional materials and that should be considered for the purpose of his appeal. If the petitioner has taken up the very same defence before the trial Court and had cross examined the respondent on that aspect, it is always open to him to canvas his appeal by bringing out any grounds about the consideration or non consideration by the trial Court. Now this exercise taken by the petitioners by way of preferring revision to receive additional evidence, seems to be a dilatory tactics without any solid reasons or materials.

8. In view of the above stated reasons, this Criminal Revision case stands dismissed. Consequently, connected miscellaneous petition is closed.

03.03.2023

Index: Yes/No
Speaking order/Non speaking order
vum

R.N.MANJULA,J.



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WEB COPY To

1. The XXI Additional Sessions Judge,
City Civil Court at Allikulam,
Chennai
2. The Public Prosecutor,
Madras High Court,
Chennai.

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