



Crl.O.P.No.8662 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.04.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.CHANDRASEKHARAN**

Crl.O.P.No.8662 of 2023

and

Crl.M.P.No.5539 of 2023

Afzal Fazil Rahman @ Afzal Khan

...Petitioner

Vs.

Selvam

...Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed in Crl.M.P.No.693 of 2023 in CC No.402 of 2018 dated 15.02.2023 by the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Alandur by allowing this petition.

For Petitioner : Mr.D.Panchatsaram

ORDER

This Criminal Original Petition has been filed to set aside the order passed in Crl.M.P.No.693 of 2023 in CC No.402 of 2018 dated 15.02.2023 by the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Alandur by allowing this petition.



2. The learned counsel for the petitioner submitted that the petitioner is an accused in C.C.No.402 of 2018. When the case was ripe for trial, the respondent/complainant filed a petition under Section 65(C) of Indian Evidence Act seeking permission to mark the xerox copies of the following documents:-

- (i) On demand promissory note dated 20.12.2015.
- (ii) Cheque for Rs.3,00,000/- drawn on City Union Bank Ltd, Thirumudivakkam Branch bearing number 000023 dated 20.06.2018.
- (iii) Return memo dated 03.07.2018.
- (iv) Deposit slip dated 30.08.2018.
- (v) Return memo dated 05.09.2018.
- (vi) Legal notice dated 26.09.2018.
- (vii) Legal notice returned cover dated 27.09.2018.
- (viii) Legal notice dated 01.10.2018.
- (ix) Proof of delivery dated 04.10.2018.

The reason is that he had lost these documents. Despite his efforts to trace these documents, he cannot succeed. This petition was opposed by the petitioner herein by filing counter. The learned Judicial Magistrate, Fast Track Court (Magisterial Level), Alandur, on hearing the rival submissions, allowed the petition subject to the condition that the respondent herein must give an indemnity to the satisfaction of the Court against the claims of any other person upon such



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instrument. Challenging the said order, this petition is filed.

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3. It is the submission of the learned counsel for the petitioner that the respondent has not taken any efforts to trace the documents. He has not given any police complaint. In the absence of any other material to show that the respondent had made bonafide efforts to trace the documents and despite that he was not able to trace the documents, allowing the petition for marking secondary evidence is not correct. He also submitted that the cheque was issued only for security purpose and that was misused by the respondent for filing this case.

4. Considered the submission of the learned counsel for the petitioner and perused the records.

5. As referred above, it is the claim of the respondent that he had lost the aforesaid original documents and therefore, he filed a petition under Section 65(C) of Indian Evidence Act for marking xerox copies of the documents. This Court finds from the reply sent by the petitioner to the statutory notice issued by the respondent that the petitioner admitted the borrowal of Rs.3,00,000/- from the



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respondent and issuance of signed blank cheque. His defence is that he repaid the amount along with interest and therefore, there is no legally enforceable debt or liability against him; he has not instructed the respondent to present the cheque. Therefore, the presentation of cheque without his knowledge is not legal.

6. It is the case where the petitioner had admitted the issuance of cheque in a blank format. It is not the case where the petitioner totally denied the impugned cheque as not his cheque and he has not signed the cheque. In the said circumstances, this Court finds that there is nothing illegal or irregular in allowing the petition filed under Section 65(C) of Indian Evidence Act for marking the secondary evidence namely, xerox copies of the documents.

7. In view of the above, the order passed in Crl.M.P.No.693 of 2023 in CC No.402 of 2018 dated 15.02.2023 by the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Alandur is confirmed.



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8. Accordingly, this Criminal Original Petition is dismissed. Consequently,
the connected Miscellaneous Petition is closed.

20.04.2023

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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

To

1. The Judicial Magistrate, Fast Track Court (Magisterial Level), Alandur.
2. The Public Prosecutor,
High Court, Madras.



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G.CHANDRASEKHARAN.J.,

mn

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