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Crl.RC.No.1170 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2023

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THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

Crl.RC.No.1170 of 2023

E. Anbarasu

...Petitioner

vs.

R. Balaji

...Respondent

PRAYER: Criminal Revision Petition filed under Section 397 and 401 of Criminal Procedure Code, 1973 praying to call for the records pertaining to the order dated 26.04.2023 in Crl. M.P. No.3658 of 2022 in C.C.No.07 of 2019 before the FTC Judicial Magistrate at Thiruvannamalai.

For Petitioner : Mr.P.G.Thiyagu

For Respondent : Mr. S. Saranraj

ORDER

The present Criminal Revision Petition is directed against the orders passed in Crl M.P. No.3658/2022 in CC No.7/2019 on the file of the Judicial Magistrate (Fast Track Court), Magisterial Level, Thiruvannamalai.



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2. The brief facts of the case are as follows:

- i. The petitioner is the accused in CC No.07/2019.
- ii. The respondent/complainant filed a private complaint under Section 200 Cr.P.C. before the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thiruvannamalai, against the present Revision Petitioner under Section 138 of the Negotiable Instruments Act (hereinafter called NI Act).
- iii. Summons were issued to the present revision petitioner and on his appearance copies of documents were furnished to him under Section 207 Cr.P.C. The learned trial court judge posted the matter for trial since the revision petitioner/accused pleaded not guilty of the offence.
- iv. The respondent/complainant thereafter filed a petition in Crl.M.P.No.3658 of 2022 to mark the Photostat copy of the cheque as an exhibit. In the petition, the respondent/complainant had contended that he lodged a complaint with the Inspector of Police, District Crime Branch, Thiruvannamalai, against the present revision petitioner and that the police, under the guise of enquiry, directed the respondent/complainant to return the original cheque



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to the accused and as per the directions of the police, he handed over the original cheque to the accused and therefore he must be allowed to mark the photostat copy of the cheque.

v. The present revision petitioner filed a counter stating that the respondent/complainant had filed a false complaint against him under Section 138 of the NI Act and that he had repaid the entire amount due under the cheque. According to him, the complainant, on receipt of the entire amount due under the cheque, had given back the cheque to him. It is also his contention that a mediation was held in the presence of the panchayatdars at the office of the Superintendent of Police, Thiruvannamalai, and the revision petitioner was directed to pay a sum of Rs.11,40,000/- and the same was paid on 28.06.2019. He therefore prayed for dismissal of the petition.

vi. Learned trial court judge after analysing the rival submissions of both the parties, vide her orders dated 26.04.2023, had observed thus:

"Heard both sides. On perusal of the records the accused admits in his counter that he is in possession of alleged cheque bearing No.000017 of



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HDFC Bank, Thiruvannamalai. During his 1st questioning also the accused stated that he had settled the amount to the complainant and had obtained the original cheque from the complainant before the District Crime Branch Police, Thiruvannamali. The accused also shown the original cheque before this court during the 1st questioning. The extract of reply of the accused during 1st questioning is "பணத்தை கொடுத்துவிட்டேன். அசல் காசோலையை DCB, TVM போலீஸ் அதிகாரிகள் முன்பு என்னிடம் கொடுத்துவிட்டார். அசல் காசோலை என்னிடம் தற்போது உள்ளது என்று எதிரி நீதிமன்றத்தில் காண்பிக்கிறார்."

At this juncture it is relevant to refer to Section 64 Indian Evidence Act according to which secondary evidence may be given when the original is shown or appears to be in possession or power of the person against whom the document is sought to be proved. Considering the facts and circumstances of the case and the original of the cheque being admitted to be in possession of the accused this court allows this petition for marking of the cheque as Exhibits on the side of the complainant. The other averments between the parties are to be decided in trial.



WEB COPY 3. The learned counsel appearing for the revision petitioner contended that since the case itself is mainly based on the cheque, the original cheque has to be filed before the Court and the trial court judge had committed an error by allowing the respondent/complainant to mark the photostat copy of the cheque. He also relied on the decision of the Hon'ble Supreme Court in *Smt. J. Yashoda vs. Smt. K. Shobha Rani* (Appeal (Civil) 2060 of 2007) and contended that the requirement of Section 63 of the Indian Evidence Act is that a document can be received as an evidence under the head of secondary evidence only when the copies made from or compared with the original or certified copies or such other documents as enumerated in the above section. His specific contention is that the trial court judge ignored the mandatory requirements as contemplated under Section 63 of the Act. It was also submitted that the provisions of Section 65(a) of the Act had been lost sight of by the learned trial court judge.

4. At this juncture, it is appropriate to extract Sections 63 and 65(a) of the Indian Evidence Act, which read as under:

Section 63 in The Indian Evidence Act, 1872



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63. Secondary evidence.—Secondary evidence means and includes—

(1) Certified copies given under the provisions hereinafter contained;

(2) Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;

(3) Copies made from or compared with the original;

(4) Counterparts of documents as against the parties who did not execute them;

(5) Oral accounts of the contents of a document given by some person who has himself seen it.

Section 65 in The Indian Evidence Act, 1872

65. Cases in which secondary evidence relating to documents may be given.—Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:—

(a) When the original is shown or appears to be in the possession or power— of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;

5. It is to be seen that under Section 64 of the Indian Evidence Act, documents must be proved by primary evidence. No doubt it is true that the present case is based on a cheque. The revision petitioner/accused had admitted at the time of questioning that he is in possession of the original cheque and that he got that back from the



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complainant only after repaying the entire amount. On the contrary, the case of the complainant is that as per the directions of the District Crime Branch, Thiruvannamalai, he handed over the original cheque to the accused since the latter assured him that he would pay the balance amount of Rs.5,60,000/-. The question whether the revision petitioner got back the cheque from the respondent/complainant only after due repayment of the entire loan amount due under the cheque can be gone into only after full fledged trial. Since the original cheque is admittedly in possession of the present revision petitioner, the complainant can be permitted to mark photostat copy of the same. Moreover, consequent upon CTS (Cheque Truncation System) implemented in the year 2010, scanned copy of the cheque is transmitted to the clearing branch of the respective bank and the cheque is passed or returned based on the other aspects including availability of sufficient balance. In such scenario, I do not find any reason as to why the photostat copy of the cheque should not be admitted as an evidence in the Court especially when the original cheque is in the hands of the revision petitioner/accused. The decision in ***Smt. J. Yashoda vs. Smt. K. Shobha Rani*** (cited supra) would not apply to the facts of the present case. Therefore, I hold that the orders passed by the learned Judicial Magistrate (Fast Track Court), Magisterial Level,



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Thiruvannamalai. is perfectly in order and I do not find any reason to interfere with the same.

6. In the result,

- i. the Criminal Revision Petition is dismissed. No costs.
- ii. The order dated 26.04.2023 in Crl. M.P. No.3658 of 2022 in C.C.No.07 of 2019 on the file of the FTC Judicial Magistrate, at Thiruvannamalai, is confirmed.

07.07.2023

bga

Index : yes/no

Speaking /Non speaking Order

To

1. Judicial Magistrate (Fast Track Court), Magisterial Level, Thiruvannamalai.
2. The Section Officer, Criminal Section, High Court, Madras



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R.HEMALATHA, J.

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