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Crl.R.C.No.1166 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2023

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THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.R.C.No.1166 of 2022

M.Gagan Bothra

... Petitioner

/vs/

J.Sathish Kumar,

... Respondent

Prayer: Criminal Revision Petition is filed under Section 397 and 401 of Cr.P.C., to set aside the judgment/order dated 27.06.2022 passed in Crl.M.P.No.10596 of 2019 by the Learned Fast Track Court No.4, Metropolitan Magistrate, George Town, Chennai.

For Petitioner ... Mr.M.Gagan Bothra (Party-in-person)

For Respondent ... Mr.L.Infant Dinesh

ORDER

Challenging the impugned order passed in Crl.M.P.No.10596 of 2019 in C.C.No.1033 of 2017 on the file of the Learned Fast Track Court No.4, Metropolitan Magistrate, George Town, Chennai, dated 27.06.2022, the present Criminal Revision Petition has been filed.



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2. The petitioner appeared party-in-person. The complainant/petitioner filed a complaint against the respondent/accused for dishonour of cheque bearing No.823622, dated 22.03.2017, for a sum of Rs.35,00,000/-. He, while filing the complaint, filed the original cheque and other documents. After taking sworn statement, all documents had been returned to the complainant, to produce the same at the time of trial. Thereafter, a criminal complaint has been registered against the petitioner and his father in Crime No.213 of 2017 and they were arrested and the police have seized 200 documents along with the original cheque. Hence, the petitioner and his father filed an application in CrI.M.P.Nos.383 and 384 of 2018 in Crime No.213 of 2017, for a direction to return the seized documents.

3. The trial Court, *vide* order dated 15.02.2018 in CrI.M.P.Nos.383 & 384 of 2018 elaborately discussed and ordered to return the documents listed in the order seized by the police under the mahazar in the above said crime number. In that list of documents, the disputed cheque was also mentioned but the original cheque taken by the police in Crime No.213 of 2017, has not been returned. Therefore, the petitioner filed an application in CrI.M.P.No.10596 of 2019 before the trial Court seeking permission to file the xerox copy of the cheque. The trial Court, by passing



the impugned order, rejected the application without considering the genuine reason. Hence, he seeks to set aside the impugned order and to permit him to file xerox copy of the cheque as the secondary evidence.

4. The Learned Counsel appearing for the respondent objected to allow the revision and further contended that, the petitioner's father gave a letter to the respondent on 18.07.2017, in which, after settling the amount, all the original documents given by the respondent were returned to him. Under these circumstances, this petitioner falsely by using the xerox copy of the cheque filed the complaint. Therefore, it cannot be permitted to file xerox copy of the cheque to proceed the case. Hence, there is no reason to interfere with the order passed by the trial Court and he seeks to dismiss the revision.

5. On perusal of records, the fact reveals that the petitioner filed the complaint against the respondent/accused for the offence under Section 138 N.I Act, for dishonour of cheque bearing No.823622, dated 22.03.2017, for a sum of Rs.35,00,000/-. The case has been taken on file in C.C.No.1033 of 2017. During the trial, the petitioner filed a petition in Crl.M.P.No.10596 of 2019 seeking permission of the Court to file the xerox copy of the disputed cheque as the secondary evidence on the ground that the original cheque was seized by the respondent police in connection with the case registered in



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Crime No.213 of 2017, which was evidenced in the order passed by the Metropolitan Magistrate for exclusive trial of CCB cases (relating to cheating cases in Chennai) and CBCID Metro Cases, Chennai. The Metropolitan Magistrate Court in CrI.M.P.Nos.383 and 384 of 2018 by its order dated 15.02.2018, considered the petition seeking return of documents seized by the police, and in paragraph No.14, it was recorded what are the documents seized by the police pertaining to the Crime No.213 of 2017 are mentioned. On perusal of that schedule of documents seized by the police, the disputed cheques is mentioned in the schedule, which was seized by the C.C.B. Police in connection with the Crime No.213 of 2017.

6. The trial Court ordered in CrI.M.P.Nos.382 & 384 of 2018 to return the documents seized from the petitioner. But, so far, the police not returned the documents related in CrI.M.P.No.10596 of 2019 to the petitioner. Under these circumstances, this petitioner filed a petition seeking permission of the Court to file the xerox copy of the cheque as the secondary evidence.

7. The Learned Counsel for the respondent objected and contended on the ground that, on 18.07.2017, the father of the petitioner on receiving the loan amount, returned all the documents given by the



respondent/accused. Therefore, the xerox copy of the original cheque, which was returned by the complainant's father to the accused cannot be permitted.

So, it has to be decided before the trial Court by letting in evidence, whether the original cheque has been returned to the accused by the father of the petitioner or the police has been seized the original cheque while arresting the petitioner and his father in Crime No.213 of 2017 by the Central Crime Branch, Egmore, Chennai.

8. Therefore, the factual dispute that the original cheque has been seized by C.C.B Police, Chennai, in connection with the crime No.213 of 2017 or the original cheque was returned to the respondent/accused by the father of the complainant on 18.07.2017, as per the letter produced by the respondent counsel before this Court, has to be decided by the trial Court, after letting in evidence.

9. Therefore, the impugned order in Crl.M.P.No.10596 of 2019 is hereby set aside and the trial Court is directed to receive the xerox copy of the disputed cheque and other related documents mentioned in Crl.M.P.No.10596 of 2019 as the secondary evidence and permit the accused/respondent to let in evidence to prove that the original cheque has been returned by the father of the petitioner on 18.07.2017 and dispose the



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case, within a period of four months, from the date of receipt of a copy of this order.

10. With the above direction, this *Criminal Revision Petition is*

Allowed.

09.01.2023

Index : Yes/No.
Internet : Yes/No.
bsm

To,
The Learned Fast Track Court No.4, Metropolitan Magistrate, George Town,
Chennai.



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V.SIVAGNANAM, J.

bsm

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