



Crl.R.C. No.1218 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2023

CORAM

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

Crl.R.C.No.1218 of 2023 &

Crl.M.P. No.9543 of 2023

Babu Singh

...Petitioner

Vs.

Mohan Singh

... Respondent

Prayer : Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C. against the order dated 27.04.2023 in Crl.M.P. No.6173/2023 in Crl.A. No.194/2022, on the file of the XXI Additional City Civil Court, Chennai.

For Petitioner : Mr.M. Sunil Kumar

For Respondent ; Mr. Syed Basha

ORDER

Challenge is made to the order dated 27.04.2023 passed in Crl.M.P. No.6173/2023 in Crl.A. No.194/2022, on the file of the XXI Additional City Civil Court, Chennai.



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2. The present revision petitioner filed the abovesaid petition under Section 391 Cr.P.C. to permit him to file additional documentary evidence. The additional documentary evidence which he relied on is a copy of the FIR registered by the Inspector of Police, Chintadripet Police Station Chennai, against the petitioner herein based on the complaint preferred by the respondent/complainant.

3. The respondent/complainant filed a private complaint under Section 200 Cr.P.C. against the present revision petitioner for an offence punishable under Section 138 of the Negotiable Instruments Act in C.C.No.4624/2018 before Fast Track I Metropolitan Magistrate, Egmore, Chennai and the accused, after full trial, was convicted by the trial court judge for an offence punishable under Section 138 of the Negotiable Instruments Act and was sentenced to undergo simple imprisonment for a period of 2 years and to pay a compensation of double the cheque amount under Section 357(3) Cr.P.C, in default, to undergo simple imprisonment for a period of 6 months.



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4. Aggrieved over the same, the accused filed an appeal in C.A.No.194/22 before the XXI Additional Judge, City Civil Court, Allikulam, Chennai. During the pendency of the appeal, the accused filed a petition in Crl.M.P. No.6173/2023 for permitting him to file an additional document. The said petition was dismissed by the appellate court vide orders dated 27.04.2023, on the following grounds:

- i. The complainant was not at all cross examined with regard to the document (copy of the First Information Report) dated 14.07.2018.
- ii. The appellate court cannot exercise its discretion to fill up the lacuna.
- iii. The fact that the petitioner was able to obtain the copy of the First Information Report (FIR) only recently would not entitle him to mark the same at a belated stage especially when all these events were prior to cross examination of P.W.2, which was done in the year 2019 and the accused was in know of the FIR against him.

5. Aggrieved over the orders passed by the learned XXI Additional City Civil Court, Chennai, the present Criminal Revision



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6. Heard Mr.M. Sunil Kumar, learned counsel for the revision petitioner and Mr. Syed Basha, learned counsel for the respondent.

7. Mr.M. Sunil Kumar, learned counsel for the revision petitioner drew the attention of this court to the copy of the complaint wherein the present complainant had mentioned that the accused approached him on 19.09.2017 for obtaining a loan of Rs.6,37,650/- to meet his urgent business and family expenses and issued a cheque bearing No.002584 dated 08.01.2018 drawn on IDBI Bank, Pudupet Road Branch, Tirupattur. On the contrary in the complaint it is stated that the complainant had advanced a loan amount of Rs.6,37,650/- on 19.09.2017 and that the accused issued a cheque bearing No.0002582. His specific contention is that on 19.09.2017 only one loan of Rs.6,37,650/- was given to the accused as per the complaint and hence the present petition Under Section 138 of the Negotiable Instruments Act. has to be dismissed. It is also his contention that since the present



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petitioner could get a copy of the FIR only recently, he could not file it before the trial court.

8. Per contra Mr. Syed Basha, learned counsel for the respondent contended that the transaction mentioned in the FIR is totally different from the transaction mentioned in the complaint and that the cheque numbers also vary. It is his submission that the appellate court had by a well considered order dismissed the petition filed by the present petitioner and that the present petitioner cannot be permitted to fill up the lacuna at the appellate court by way of filing the present petition. It is also his contention that the present petitioner had missed his opportunity of cross examining P.W.1 with regard to the said document and that the present petition is filed for delaying the process of law. The learned counsel for the respondent relied on the decision of this Court in ***P.S.Subramanian vs. S. Thannammal (Crl.R.C. No.1358 of 2022 dated 26.09.2022)*** wherein it has been held thus:

5. The petitioner has admitted the execution of the cheque, but the only defence taken by the petitioner is that the cheque was not issued towards discharge of legally



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enforceable debt. The respondent/ complainant by coercion and force obtained the cheques from the petitioner and that defence was not substantiated by the petitioner before the trial Court. The learned Magistrate draw the statutory presumption under Section 139 of N.I.Act, then it is for the petitioner to rebut the presumption in the manner known to law. The petitioner has not given any reply or he has not extensively cross examined the respondent, when the respondent himself examined as P.W.1. Further, the petitioner did not put any suggestion before the complainant during cross examination that by force and coercion the respondent obtained cheque and he has not disclosed that whether he preferred any complaint for the same. Therefore the trial Court convicted the petitioner. Against the conviction, the petitioner filed an appeal, in which, he has filed the petition under Section 391 Cr.P.C. to allow him to mark some piece of document, which



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according to the petitioner, obtained after the conviction, and to cross examine the respondent/complainant. The Sessions Court, dismissed the same, observing that without any such defence, before trial Court, during cross examination of the respondent/complainant, only at the time of appeal, the he has introduced new facts, which cannot be accepted.

6. Therefore the petitioner/accused, in order to fill up the lacuna, has filed the petition under Section 391 Cr.P.C, which is only after taught, since he has not taken such defence either by sending reply notice or during cross examination of the respondent/complainant during trial. Therefore, this Court does not find any grounds to interfere with the order of the Court below and this revision is devoid of merits.

9. A perusal of the records shows that the present revision



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petitioner/accused did not send any reply notice to the statutory notice issued by the complainant. He did not also deny his signature on the cheque bearing No.002584. When the present petitioner/accused was questioned under Section 313 C.P.C., he simply denied all the allegations and did not dispute the existence of any liability towards the complainant. The trial court had categorically held that the accused was not able to convincingly rebut the presumption existing in favour of the complainant under Section 118 and 139 of the Negotiable Instruments Act especially when the onus is on his shoulders. Moreover, the cheque number in the police complaint dated 18.07.2018 is 002582 where as in the present complaint it is indicated as 002584. The police had registered FIR on the basis of the complaint given by the respondent/complainant in Crime No.192/2018 in F1 Chintadripet Police Station, Chennai, for the offence under Sections 406 and 420 IPC and the investigation is not yet completed. Merely because in the complaint it is stated that the accused approached the complainant on 19.09.2017 and borrowed a sum of Rs.6,37,650/- it cannot be stated that on the said date there was only one transaction between the two parties.



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10. Though it is contended by the learned counsel for the petitioner that the complainant had taken away the signed blank cheque from the shop of the accused, the same has not been substantiated by adducing acceptable evidence. If really the complainant had stolen the signed blank cheques from the shop of the accused, the accused would not have kept quiet. Till date he did not initiate any criminal proceedings against the complainant for the reasons best known to him. It is also pertinent to point out that the present petitioner/accused did not appear before the trial court regularly and a non bailable warrant was issued against him. Subsequently he recalled the non bailable warrant and the case was disposed of by the trial court only in the year 2022. The complaint was filed in the year 2018 and the accused had successfully dragged on the proceedings. Now at the appeal stage the accused has filed a frivolous petition for receiving an additional document and the appellate court had, by a well considered order, dismissed the said petition. In the circumstances, I do not see any reason to interfere with



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the same. Since the appeal is of the year 2022, the appellate court is directed to dispose of the same as expeditiously as possible.

11. In the result,

i. the Criminal Revision Petition is dismissed. No costs.

Consequently connected miscellaneous petition is closed.

ii. the order dated 27.04.2023 in Crl.M.P. No.6173/2023 in Crl.A. No.194/2022, on the file of the XXI Additional City Civil Court, Chennai, is confirmed.

iii. Since the appeal is of the year 2022, the XXI Additional Judge, City Civil Court, Chennai, is directed to dispose of the same as expeditiously as possible.

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Internet: Yes/No

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Speaking/Non-Speaking order
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R. HEMALATHA, J.
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To

XXI Additional Judge, City Civil Court, Chennai,

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