



Crl.R.C. No.1312 of 2023

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2023

CORAM

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

Crl.R.C.No.1312 of 2023 &

Crl.M.P. No.10867 of 2023

P. Murali

...Petitioner

Vs.

A.K.Sasikumar

... Respondent

Prayer : Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C. against the order dated 08.05.2023 passed by the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Tiruvallur, in Crl.M.P. No.608 of 2023.

For Petitioner : Mr.P.K. Ganesh

ORDER

Challenging the orders dated 08.05.2023 passed by the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Tiruvallur, in Crl.M.P. No.608 of 2023, the present petition is filed.

2. The present petitioner filed the abovesaid petition under



Crl.R.C. No.1312 of 2023

WEB COPY

Section 145(2) of Negotiable Instruments Act, praying to return the Crl.M.P. No.2713/2022, 2714/2022 & 2715/2022 filed by the respondent/accused .

3. The present revision petitioner/complainant filed a private complaint under Section 200 Cr.P.C. against the respondent/accused for an offence punishable under Section 138 of the Negotiable Instruments Act, before the Judicial Magistrate, Fast Track Court at Magisterial Level, Tiruvallur, in S.T.C. No.151/2021. The petitioner/complainant examined himself and the accused thereafter was also questioned under Section 313(1) Cr.P.C. with regard to the circumstances appearing in evidence against him. The accused denied of having committed any offence and subsequently he examined himself as D.W.1 and marked 8 documents. At that point of time, the present revision petitioner/complainant filed a petition under Section 145(2) of Negotiable Instruments Act in Crl.M.P. No.608/2023 praying to return the petitions filed by the accused under Section 315 Cr.P.C., which was numbered as Crl.M.P. No 2713/2022, 2714/2022 and 2715/2022 in STC No.151/2021, 152/2021 and 153/202,



Crl.R.C. No.1312 of 2023

WEB CODE

stating that the accused should not be permitted to examine by way of filing proof affidavit. The respondent/accused filed a counter stating that he did not file any proof affidavit and that he was examined orally and adduced 8 documentary evidence. The learned Judicial Magistrate, after considering the rival submissions made by both the parties, had dismissed the abovesaid petition filed by the present petitioner/complainant by observing thus:

"Heard and perused records. The case is pending at the stage of cross examination of D.W.1. This petition is filed to return the petition filed under Section 315 Cr.P.C. which was numbered as Crl.M.P. No.2713/2022, 2714/2022 and 27/15/2022 in S.T.C. No.151/2021, 152/2021 and 153/2021. The reason stated out to return the petitions is that the accused who was chief examined as D.W.1 was examined on affidavit. The petitioner relied upon the judgment rendered by Hon'ble Apex Court in Mandvi Co-operative Bank Ltd vs. Nimesh B.Thakur reported in 2010 (3) SCC 83 and the judgment rendered by Hon'ble Kerala High Court in Kalladikattil Mohammed Jala Vs. State of Kerala and another, vide Crl. M.C. No.3092 of 2017, to show that the accused cannot give evidence through proof



WEB COPY

affidavit. On perusal of records, in the case on hand when the case was posted for defence evidence the respondent/accused had filed petition under Section 315 Cr.P.C. seeking permission to examine himself as witness. After receiving the counter and upon hearing both sides the said petition was allowed. Eventually, the respondent/accused entered into the witness box and deposed his oral evidence and also adduced eight documents on his side. Thus, as contended by the respondent the chief examination of accused (D.W.1) was taken orally and not through proof affidavit. Hence, this petition being filed with false averment stating D.W.1 examined on affidavit it not maintainable. So this petition is deserved to be dismissed."

4. Aggrieved over the same, the present petition is filed by the complainant.

5. This Criminal Revision Case is posted today before this court for admission and the same is decided in the admission stage itself.



Crl.R.C. No.1312 of 2023

WEB COPY

6. Mr. P.K. Ganesh, learned counsel for the revision petitioner relied on the decision in *M/s. Mandvi Co-op Bank Ltd., Vs. Nimesh B. Thakore* reported in **2010 1 ACR 522** and contended that as per Section 145(1) of the Negotiable Instruments Act, the Magistrate cannot allow the accused to give his evidence on affidavit. He also relied on the decisions in *Kalladikkattil Mohammed Jamal Vs.State of Kerala & Others* reported in **2017 4 KLJ 39** and *V. Thanaiya Vs. M. Balasamy Nadar* reported in **2005 (2) CTC 288**, wherein it has been held as follows:

"6. On a perusal of the above provision, it makes clear that Proviso (1) to Section 145 enables the complainant to adduce evidence on affidavit, whereas Proviso(2) to Section 145 do not proceed in the same manner as provided under Proviso (1). Section 145(2) of the Act enables either the prosecution or the accused to file an application for the purpose of examining any person giving evidence on affidavit. If the intention of the legislature is



CrI.R.C. No.1312 of 2023

WEB COPY *to enable the accused also to give evidence on affidavit, the Proviso (2) of Section 145 would have been worded similar to proviso(1). Inasmuch as different languages is used in both the provisions, it cannot be contended that the benefit conferred upon the complainant under Section 145 Proviso (1) is available to the accused also namely examining himself to adduce evidence on affidavit."*

In the instant case, the accused entered into the witness box and examined himself and he did not file any proof affidavit and this is clear from the records.

7. The next contention of the learned counsel for the petitioner is that the accused cannot mark the documents and that his evidence can only be oral and he can only let in oral evidence. This Court is unable to understand the logic behind this argument as no law prohibits the accused from marking the documents and therefore I do not see any



Crl.R.C. No.1312 of 2023

WEB COPY

reason to interfere with the findings recorded by the court below. The decisions relied on by the learned counsel for the petitioner deals only with the proof affidavit filed by the accused and not with regard to marking of documents.

8. In the result,

- i. the Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed.
- ii. the orders dated 08.05.2023 passed by the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Tiruvallur, in Crl.M.P. No.608 of 2023 , is confirmed.

26.07.2023

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

bga



WEB COPY



Crl.R.C. No.1312 of 2023

R. HEMALATHA, J.
bga

To

The Judicial Magistrate, Fast Track Court at Magisterial Level,
Tiruvallur,

Crl.R.C.No.1312 of 2023 &
Crl.M.P. No.10867 of 2023

26.07.2023