



Crl.R.C.No.1318 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2023

CORAM

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

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J.Sathish Kumar

... Petitioner

Vs.

M.Gagan Bothra

... Respondent

Prayer : Criminal Revision filed under Section 397 r/w. 401 of Criminal Procedure Code, to set aside the orders in Crl.M.P.No.1794 of 2023 in C.C.No.1033/2017, dated 18.04.2023 on the file of the Metropolitan Magistrate (Fast Track Court Magisterial level IV), George Town, Chennai.

For Petitioner : Mr.L.Infant Dinesh

ORDER

Challenging the orders dated 18.04.2023 passed by the learned Metropolitan Magistrate (Fast Track Court Magisterial level IV), George Town, Chennai in Crl.M.P.No.1794/2023 in C.C.No.1033/2017, the present revision is filed.



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2. The respondent / complainant filed a private complaint under Section 200 Cr.P.C., in C.C.No.1033/2017 before the Metropolitan Magistrate (Fast Track Court Magisterial level IV), George Town, Chennai against the revision petitioner / accused for an offence punishable under Section 138 of the Negotiable Instruments Act.

3. The case of the respondent / complainant is that the petitioner/accused borrowed a sum of Rs.2,60,00,000/- from him and issued a cheque bearing No.000512 on 22.03.2017 drawn on Andhra Bank, T.Nagar Branch, Chennai-17 for Rs.35,00,000/- towards the discharge of his part liability. When the complainant presented the cheque through his banker viz., IDBI Bank Ltd., Parrys Corner Branch, Chennai, the same was returned on 23.03.2017 with an endorsement 'funds insufficient'. Thereafter, the complainant issued a statutory notice to the revision petitioner/accused calling upon the latter to discharge the amount due under the cheque within 15 days from the date of the receipt of the said notice. Though the revision petitioner/accused received the



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said notice, he neither came forward to make good the payment nor sent any reply. Therefore, he filed a private complaint under Section 200 Cr.P.C., for the offence punishable under Section 138 of the Negotiable Instruments Act.

4. The learned Metropolitan Magistrate took cognizance of the offence and issued summons to the revision petitioner / accused. On appearance of the accused, copies of records were furnished to him under Section 207 of Cr.P.C., When the accused was questioned with regard to the substance of the accusation made against him, he pleaded not guilty and the case was posted for trial. The respondent / complainant examined himself as P.W1 and two other witnesses as P.W.2 and P.W.3 and marked Ex.P1 to Ex.P8. The accused was thereafter questioned under Section 313 (i) (b) Cr.P.C. with regard to the incriminating circumstances appearing in evidence against him. The accused denied of having committed any offence and examined himself as D.W1 and the Inspector of Police, CCB -I, Chit and Kanduvatti Wing, Vepery, Chennai - 07 as D.W.2. Subsequently, he filed a petition in Crl.M.P.No.1794 of 2023



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under Section 245 (2) of Cr.P.C., for issuing summons to the witnesses viz., Mrs.Meena Priya and Mrs.Prabha, the then Inspectors of Police, CCB-I, Chit and Kanduvatti Wing, Vepery, Chennai. The said petition was dismissed on 18.04.2023 by the learned Metropolitan Magistrate, Fast Track Court level IV, George Town, Chennai, against which, the present revision is filed by the petitioner/accused.

5. The specific contention of the revision petitioner is that on the basis of the complaint given by the revision petitioner / accused, the Inspector of Police, CCB wing, Vepery, Chennai registered a case in Crime No.213/2017 and the respondent / complainant was arrested and remanded to Judicial custody on 26.07.2017. According to the revision petitioner, more than 200 documents, Rupees one Crore Cash and Jewels worth about Rs.50 lakhs were seized from the complainant and the same were sent to Court under form 95 and that all the seized cheques were handed over to the accused by the father of the present complainant and they were destroyed immediately.



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6. The respondent/complainant filed a counter stating that the present petition is nothing but an abuse of process of law and that when the investigating officer has already been examined in the instant case, there is no necessity for summoning the previous investigating officers who were incharge of the said Police Station.

7. The learned trial Judge after considering the rival submissions made by both the parties, dismissed the petition filed by the revision petitioner on the following grounds:

- i. At the time of filing the complaint, the complainant filed the original cheque before the Court and thereafter it was returned to the complainant. However, during trial, the original cheque was not produced.;
- ii. The accused has to establish that he settled the dispute between him and the complainant and received the cheques from the father of the complainant;



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- iii. The Court cannot conduct a roving enquiry with regard to some other criminal case which is pending on the file of the Inspector of Police, CCB-I Chit and Kanduvatti Wing, Vepery, Chennai;
- iv. Moreover, the accused had not mentioned the names of the present witnesses in the list of witnesses immediately after questioning under Section 313 of Cr.P.C.,
- v. The case is also posted on day to day basis and the present petition seems to have been filed only to drag on the proceedings.

8. Mr.L.Infant Dinesh, learned counsel for the petitioner drew the attention of this Court to the deposition of Mr.Rajesh Khanna, present investigating Officer (D.W.2). In the chief examination, D.W.2 had deposed that his predecessor had seized around 40 documents from the respondent / complainant and that it cannot be said that whether all those documents were original or Photostat copies. The learned counsel for the revision petitioner further drew the attention of this Court to S.No.28 of



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the Seizure Magazer wherein there is a mention about three cheques bearing Nos.0823622, 000512, 000513 drawn on Andhra Bank and IDBI Bank. According to him, the previous investigating officers have to be examined in this regard and the same would throw some light with regard to seizure of the impugned cheques by the Police.

9. D.W.2 had deposed based on the case diary. It is also revealed that there is no specific entry in the list as to whether all the documents seized by the Police were handed over to the Court under Form 95. In these circumstances, examining the previous investigating officers would not serve any useful purpose as they are going to rely only on the CD file. They may not be in a position to state anything from their memory and any such deposition in the absence of documents cannot also be accepted. Hence, the orders passed by the learned Metropolitan Magistrate is perfectly in order.

10. Accordingly, this Criminal Revision is dismissed. Since the private complaint is of the year 2017, the learned Metropolitan Magistrate



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(Fast Track Court Magisterial level IV), George Town, Chennai is directed to dispose the case in C.C.No.1033/2017 on merits and in accordance with law, within a period of one month from the date of receipt of a copy of this order.

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Index: Yes/No
Speaking/Non-Speaking order
mtl

To

The Metropolitan Magistrate
(Fast Track Court Magisterial level IV),
George Town, Chennai 01.



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R. HEMALATHA, J.
mtl

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