



Crl.R.C.No.1315 of 2023

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2023

CORAM

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

Crl.R.C.No.1315 of 2023

J.Sathish Kumar

... Petitioner

Vs.

Sandeep 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.1793 of 2023 in C.C.No.1105/2017, 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.1793 of 2023 in C.C.No.1105/2017, the present Criminal Revision is filed.



Crl.R.C.No.1315 of 2023

WEB COPY

2. The respondent / complainant filed a private complaint under Section 200 Cr.P.C., in C.C.No.1105/2017 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 loan from him and issued a cheque bearing No.000513 on 28.03.2017 drawn on Andhra Bank, T.Nagar Branch, Chennai-17 towards the discharge of his liability. When the complainant presented the cheque on the same day i.e., on 28.03.2017 through his banker viz., IDBI Bank Ltd., Parrys Corner Branch, Chennai, the same was returned 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 said notice, he neither came



Crl.R.C.No.1315 of 2023

forward to make good 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, issued summons to the revision petitioner / accused for his appearance. 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 Exs.P1 to P8. The accused was 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. However, the accused examined the Inspector of Police, CCB -I, Chit and Kanduvatti Wing, Vepery, Chennai - 07 as D.W.1. Thereafter, he filed a petition in Crl.M.P.No.1793 of 2023 under Section 245 (2) of Cr.P.C., for issuing



Crl.R.C.No.1315 of 2023

WEB COPY

summons to the witnesses viz., Mrs.Meena Priya, Inspector of Police, CCB-I, Chit and Kanduvatti Wing, Vepery, Chennai and Mrs.Prabha, Inspector 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. According to him, all the seized cheques were handed over to the accused by the father of the accused and they were destroyed immediately.



WEB COPY

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 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 the accused settled the dispute between him and the complainant and received the cheques from the father of the complainant;



Crl.R.C.No.1315 of 2023

WEB COPY

- iii. The Court cannot conduct 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 who was examined as 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 photo copies. However, the learned counsel for the revision petitioner drawing the attention of this Court to S.No.28 of the Seizure Magazer wherein there is a mention about the three cheques bearing Nos.0823622, 000512,



Crl.R.C.No.1315 of 2023

WEB COPY

000513 drawn on Andhra Bank and IDBI Bank. He further contended that only after examining the previous investigating officers, it would come to light that whether the impugned cheques were seized by the Police at the time of investigation.

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



Crl.R.C.No.1315 of 2023

WEB COPY

10. Accordingly, this Criminal Revision is dismissed. Since the complaint is of the year 2017, the learned Metropolitan Magistrate (Fast Track Court Magisterial level IV), George Town, Chennai is directed to dispose the case in C.C.No.1105/2017 on merits and in accordance with law, within a period of one month from the date of receipt of a copy of this order.

27.07.2023

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

To

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



WEB COPY



Crl.R.C.No.1315 of 2023

R. HEMALATHA, J.

vum

Crl.R.C.No.1315 of 2023

27.07.2023