IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2023

CORAM

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

Crl.R.C.No.1303 of 2023 and
Crl.M.P.No.10666 of 2023

Anbazhagan ... Petitioner

Vs.

Jeyam Traders,
by Managing Partner,
Maheswari,
by Power Agent,
M.Kannan ... Respondents

Prayer : Criminal Revision Petition filed under Section 397 r/w. 401 of Criminal Procedure Code, to set aside the order, dated 05.06.2023 made in C.M.P.No.3290 of 2023 on the file of the Judicial Magistrate, Additional Mahila Court, Namakkal by allowing the present Criminal Revision Petition.

For Petitioner : Mr.Deepanuday

ORDER

Challenging the orders, dated 05.06.2023 passed in C.M.P.No.3290 of 2023 by the Judicial Magistrate, Additional Mahila Court, Namakkal, the present Criminal Revision petition is filed by the petitioner/accused.

2. The respondent who is the complainant, has filed a private complaint in C.C.No.463 of 2023 under Section 200 of Cr.P.C., against the petitioner/accused for an offence under Section 138 of Negotiable Instruments Act.

3. The case of the respondent/complainant is that the complainant and the accused are known to each other and the complainant advanced a sum of Rs.16,48,590/- from 15.06.2016 to 15.12.2016 for supply of poultry feed by the accused. But, the accused did not supply the same and therefore the complainant requested the accused to repay the amount, for which the accused issued a cheque dated 11.01.2019 for a sum of Rs.16,48,590/- drawn on Karur Vysia Bank, Karur Central Branch. When the said cheque was presented for collection through his banker viz., State Bank of India, Namakkal Branch, the same was returned with an endorsement 'Funds insufficient'. Thereafter, the complainant issued a notice to the accused on 05.03.2019 and the same was served on the accused. However, the accused neither chose to come forward to make good the payment nor sent any reply.

Therefore, the respondent / complainant filed the complaint before the Judicial Magistrate, Additional Mahila Court, Namakkal. On receipt of the said complaint, the learned Judicial Magistrate took cognizance of the offence and issued summons for appearance of the accused. Copies of records were furnished to the accused on his appearance, under Section 207 of Cr.P.C., When the accused was enquired with regard the substance of the acquisition made against him in the complaint, he pleaded not guilty and therefore the case was posted for trial.

4. The respondent / complainant examined himself as P.W.1 and closed his evidence. When the petitioner / accused was questioned under Section 313 (i) (b) Cr.P.C. with regard to the incriminating circumstances appearing in evidence against him, he denied of having committed any offence. Thereafter the accused examined himself as D.W.1.

5. When the matter was posted for arguments, the accused filed a petition under Section 254 (2) of Cr.P.C., to get an opinion from an

auditor with regard to the documents namely Ledger adduced by the complainant and also to examine the said auditor as a witness on the side of the petitioner/accused. The said petition in CMP No.3290 of 2023 was dismissed by the learned Judicial Magistrate, Additional Mahila Court, Namakkal by observing thus:

"*5. POINTS :*

1. *According to the learned counsel of the petitioner, it is necessary to issue summon to any auditor to examine as defence side witness in order to obtain expert opinion relating to the documents exhibited by the respondent's company before this court. The respondent's company had not stated about the balance amount which is to be paid by the petitioner's company, and non filing of the accounts regarding the amount paid by this petitioner's company to the respondent's company, then the petitioner is unable to prove his case in the court.*
2. *According to the respondent counsel, the respondent in his cross examination had admitted the said facts regarding the amount paid by the petitioner after lodging of complaint before police station such as a*

sum of Rs.7,00,000/- on 24.04.2019, a sum of Rs.2,50,000/- on 30.05.2019 and a sum of Rs.2,00,000/- on 20.07.2019 by way of Demand Draft and hence, this petition is filed with only with intend to delay the proceeding by the petitioner.

3. *The petitioner filed this petition to examine any auditor in order to obtain expert opinion such as whether the documents which are filed by the respondent (PW1) before this court are legally valid and enforceable in law, and whether the company can file income tax returns, directly without filing VAT and GST Tax is appropriate.*
4. *On the other hand, the respondent states that the respondent's company and the petitioner's company had bought and sold exempted goods under VAT Tax, therefore they have not filed any GST return, Sales Book, Book of Accounts with the GST counsel as it is not necessary to file the said particulars in that regard.*
5. *On perusal of records, this court finds that this petitioner had already filed an application under Section 91 of Cr.P.C to cause production of GST filings and Ledger Account Statements from the respondent's company which was numbered as C.M.P.No.4620/2022*

was allowed on 11.01.2023. The respondent had also filed the said particulars of IT statements and for which both side examination of evidence had already completed. The respondent had also produced Tamil Nadu Value Added Tax Act, 2006, in which Section 15 - Exempted Sale:- " Sale of Goods specified in 4th Schedule and Goods exempted by Dealer shall be exempted from tax". As per the 4th Schedule, S.No.906, 907 and 910, 911 in which de-oiled cake and de-oiled rice bran had been exempted from VAT and CST. The petitioner, for the above contention of the respondent, had not filed any evidence in order to falsify the case of the petitioner that the goods are not exempted from VAT Tax.

6. *This court also finds that the petitioner and respondent had already admitted that the transaction between petitioner's company and respondent's company had been carried even before implementation of GST. The contention of the respondent counsel is that both the petitioner and the respondent's company had bought and sold exempted goods under VAT Tax, therefore they have not filed any GST return, Sales Book, Book of Accounts with the GST counsel. It is pertinent to note*

that petitioner/accused side evidence was already closed on 19.01.2021 and then posted for judgment on 27.01.2021, thereafter both parties filed numerous applications in this case and hence the case is pending from 27.01.2021 to till date i.e) 5th June 2023 although the cheque dishonor cases summary in nature.

7. *On careful perusal of the evidence let in by both sides, and upon consideration of facts and circumstances in this case, this court finds there is no merit in this petition for issuing summon to any auditor to obtain expert opinion regarding the documents filed by the respondent's company in their evidence and hence, this petition is devoid of any merits and had been filed only to protract the case, by the petitioner/accused. Hence, the petition is dismissed and the point is answered accordingly."*

6. The learned counsel for the petitioner contended that unless the document is sent to an auditor to get his opinion, the accused cannot disprove the case of the complainant. He also contended that the petitioner / accused is also ready to pay the fee of the auditor for going through the ledger accounts maintained by the respondent / complainant.

7. At the outset, it may be observed that the revision petitioner accused had admitted his signature on the cheque which was marked as Ex.P8. Once the signature is admitted, there is a presumption under Sections 118 and 139 of the Negotiable Instruments Act, unless the contrary is proved. In the present case, the accused did not issue any reply to the statutory notice issued by the complainant. The present revision seems to have been filed to examine the auditor as witness on the side of the accused to get his opinion as to whether the company of the complainant can file the Income tax returns directly without filing VAT and GST. The complainant company in his counter has stated that they are doing business in buying and selling exempted goods under VAT and GST and therefore it is not necessary to get an opinion of an Auditor in this regard. In fact, the present revision petitioner filed another application on an earlier occasion under Section 91 of Cr.P.C., to cause production of GST filings and ledger account statements from the respondent's company in C.M.P.No.4620 of 2022 and the said petition was allowed on 11.01.2023. Pursuant to the same, the respondent / complainant has filed all those details before the Court. The

respondent/complainant in fact had adverted the attention of the trial Court under TNVAT Act, 2006. Section 15 of the Act states that de-Oiled rich bran is exempted from VAT and GST.

8. In this circumstance, the trial Court was right in dismissing the petition filed under Section 254 (2) of Cr.P.C., filed for getting the opinion of the auditor. Thus, the observation made by the trial Court is perfectly in order.

9. The present petitioner is also giving an impression that he is trying to protract the proceedings as far as possible. Therefore, the trial Court viz., the Judicial Magistrate, Additional Mahila Court, Namakkal is directed to dispose the C.C.No.463 of 2021 on merits within a period of one month from the date of receipt of a copy of this order.

10. With the above direction, this Criminal Revision case is disposed of. Consequently, connected miscellaneous petition is closed.

25.07.2023

Index: Yes/No

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

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