



Crl.R.C.No.1289 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2023

CORAM

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

Crl.R.C.No.1289 of 2023 and  
Crl.M.P.No.10514 of 2023

1. Orbit Rock Constructions,  
Rep. By its Managing Partner,  
C.Nandhakumar

2. C.Nandhakumar

3. C.Gokilambal

4. N.Vimala

... Petitioners

Vs.

M/s.Ultra Reddy Mix concrete Pvt. Ltd.,  
Rep. by its Assistant Manager – HR  
Perumalsamy

... Respondent

Prayer : Criminal Revision filed under Section 397 r/w. 401 of Criminal Procedure Code, to call for the records relating to the order dated 19.04.2023 made in Crl.M.P.No.233 of 2023 in S.T.C.No.51 of 2019 on the file of the District Munsif cum Judicial Magistrate, Uthukuli and set aside the same.

For Petitioners : Mr.C.Munusamy



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**ORDER**

Challenging the orders, dated 19.04.2023 passed in Crl.M.P.No.233 of 2023 in S.T.C.No.51 of 2019 by the learned District Munsif cum Judicial Magistrate, Uthukuli, the present Criminal Revision is filed by the petitioners.

2. The revision petitioners are the accused in S.T.C.No.51 of 2019. The respondent/complainant filed a private complaint under Section 200 of Cr.P.C., against the accused in S.T.C.No.51 of 202019 for the offence punishable under Section 138 of the Negotiable Instruments Act. During the course of trial, the respondent / complainant filed a petition under Section 65 (3) of Indian Evidence Act in Crl.M.P.No.233 of 2023 in S.T.C.No.51 of 2019, seeking permission to file Photostat copy of the cheque that has been objected by the petitioners/accused. The petitioners / accused filed objections. The learned trial Court Judge after considering the rival submissions allowed the petition by observing thus:



*“10. Furthermore, the petitioner/complainant has provided an affidavit stating that they obtained the original cheque from the predecessor court soon after its numbering but subsequently lost it while in their custody during the process of making photocopies on 25.01.2023. Given that these facts are affirmed in an affidavit, this Court finds the petitioner's version to be genuine.*

*11. It is also worth noting that in the reply given by the respondent/accused, the signature contained therein was not specifically denied. Therefore, the court deems the signature to be admitted. Additionally, photocopy of the original cheque was also filed with the complaint.*

*12. In the case of a lost original cheque in a complaint under Section 138 of the Negotiable Instruments Act, secondary evidence, such as a photocopy of the cheque, can be admitted to substantiate the complainant's grievance. This is in accordance with the provisions of Section 65 of the Indian Evidence Act.*

*13. A similar view was taken by the Hon'ble Supreme Court's in the case of N. Harihara Krishnan vs. J.Thomas (2005) 6 SCC 733. The Hon'ble Supreme Court of India addressed the issue of lost cheques and the admissibility of secondary evidence. The court held that if the complainant is able to establish that the original*



*cheque is lost, then the complainant should be permitted to lead secondary evidence to prove the existence and contents of the cheque. The Hon'ble court further stated that it would be incorrect and unjust to deny the complainant the opportunity to substantiate their grievance based on the loss of the original cheque.*

*14. Additionally, the Hon'ble Supreme Court in the case of Rangappa vs. Sri Mohan (2010) 11 SCC 441 emphasized that the denial of the complainant's right to adduce secondary evidence due to the loss of the original cheque would be improper and incorrect. The Hon'ble Court further stated that if the complainant can provide reasonable explanations for the loss of the cheque, he should be allowed to produce secondary evidence.*

*15. In summary, the complainant herein having demonstrated that the original cheque is genuinely lost, this Court observes that he should be permitted to present secondary evidence, a photocopy of the cheque, to substantiate his complaint under Section 138 of the Negotiable Instruments Act. Besides all, the Negotiable Instruments Act is itself a legal framework aimed to promote confidence in commercial transactions involving negotiable instruments such as cheques. Therefore, for the above said reasons this Court finds that petition deserves*



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*to be allowed.*

*16. In the result, in the interest of speedy trial and fair adjudication, this Court is inclined to allow this petition. No cost.”*

3. A perusal of the said order shows that the respondent/complainant had lost the original cheque and therefore he wanted to file a Photostat copy of the same.

4. Mr.C.Munusamy, learned counsel for the petitioner contended that the petitioners/ accused had denied the execution of the cheque as well as the signature. However the trial Court without considering the same permitted the respondent/complainant to file a Photostat copy of the cheque.

5. In the instant case, the specific contention of the respondent / complainant is that he had lost the cheque. Consequent upon CTS ( Cheque Truncation System) implemented in the year 2010, scanned copy of the cheque is transmitted to the clearing branch of the respective



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bank and the cheque is passed or returned based on the signature and other aspects including availability of sufficient balance. In such scenario, I do not find any reason as to why the photostat copy of the cheque should not be admitted as an evidence in the Court.

6. At this juncture, it is appropriate to extract Section 65(a) of the Indian Evidence Act, which reads as under:

***Section 65 in The Indian Evidence Act, 1872***

*65. Cases in which secondary evidence relating to documents may be given.—Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:—*

*(a) When the original is shown or appears to be in the possession or power— of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;*



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7. Thus, the learned trial Court Judge, had by his order specifically observed that the complainant had demonstrated that the original cheque is genuinely lost and in the circumstance, the complainant was permitted to adduce the secondary evidence. The learned trial Court Judge had gone into all the aspects of the case, especially the dictum laid down in *N.Harihara Krishnan Vs. J.Thomas reported in (2005) 6 SCC 733*. Therefore, I do not find any reason to interfere with the orders passed by the trial Court. Accordingly the Criminal Revision is dismissed. The revision petitioner can raise all his objections at the time of trial. Consequently, connected miscellaneous petition is closed.

**08.08.2023**

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

To

The District Munsif cum Judicial Magistrate,  
Uthukuli.

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**R. HEMALATHA, J.**

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