



Crl.R.C.No.1845 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1845 of 2023
and Crl.M.P.No.17413 of 2023

A.Anbalagan

... Petitioner

Vs.

K.Vadivel

... Respondent

Prayer: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to set aside the order dated 05.10.2023 in C.M.P.No.267 of 2023 made in S.T.C.No.692 of 2017 on the file of the learned Judicial Magistrate, Fast Track Court No.I, [FAC] Judicial Magistrate, Perundurai by allowing this criminal revision petition.

For Petitioner : Mr.M.Guruprasad

ORDER

This criminal revision petition is filed to set aside the order dated 05.10.2023 in C.M.P.No.267 of 2023 made in S.T.C.No.692 of 2017 on the file of the learned Judicial Magistrate, Fast Track Court No.I, Erode, [FAC] Judicial Magistrate, Perundurai.



WEB COPY 2.The petitioner/accused in S.T.C.No.692 of 2017, a private complaint filed by the respondent/complainant filed a petition under Section 243(2) of Cr.P.C. in C.M.P.No.267 of 2023 to examine one Selvi as defence witness. The Trial Court dismissed the same failing to look into the fact that statutory presumption is against the petitioner and the petitioner has to dislodge the presumption. Hence, the above petition is filed.

3.The contention of the learned counsel for the petitioner is that P.W.1 had been cross examined in detail who admits that the amount received by the petitioner had been repaid. He pointed out the evidence of P.W.1 and submitted that the respondent had admitted about knowing one Sathyakumar, a compounder in the Government Hospital, Erode but he denied with regard to Selvi and her son Velliyangiri. The petitioner's contention is that the respondent had given a loan to the said Selvi and it was Selvi who has to repay the respondent and not the petitioner. The petitioner's cheque has been misused and a false case has been foisted against him. He would submit that to prove his innocence, the petitioner



has to necessarily examine the said Selvi and hence, he filed the petition.

The Trial Court dismissed the petition at the stage of arguments stating that filing of this petition may not be proper for htr eason that the petitioner had not given any particulars about the documents and the relevancy of examining the said Selvi and the case is kept pending from the year 2017, which is not proper. Learned counsel for the petitioner further produced the e-court adjudication.

4.On perusal of cross examination of P.W.1, it is seen that though the petitioner had questioned with regard to Selvi and her son Velliyangiri, the same has been denied by the respondent/complainant. The respondent had been cross examined in detail with regard to the place of handing over the loan, the respondent's capability of giving loan and other aspects but lacks reason to summon the said Selvi. Further, from the copy of adjudication, it is seen that the case has been referred to Lok Adalat on two occasions, thereafter for evidence it was kept pending for quite sometime and later evidence recorded and the case was posted for arguments as early as on 22.04.2022. Thereafter, again posted for evidence on 26.08.2022 and



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03.09.2022. The cross examination of P.W.1 had been done belatedly only on 03.09.2022 and thereafter petition under Section 243(2) Cr.P.C. had been filed. From the evidence of the respondent, it is seen that no case has been made out to invoke Section 243(2) Cr.P.C. to summon the said Selvi. The Trial Court finding that the case is kept pending from the year 2017 and the case is at the argument stage, had rightly dismissed the petitioner. In view of the same, this Court is not inclined to entertain this petition.

5. Accordingly, the Criminal Revision Petition stands dismissed. It is made clear that the observations and reference made to Selvi or any part of the evidence of the respondent is limited only to disposal of the above case and the Trial Court to proceed with the case and dispose of the case on its own merits independently. Consequently connected miscellaneous petition is closed.

06.11.2023

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
cse



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M.NIRMAL KUMAR, J.

cse

To

The Judicial Magistrate,
Fast Track Court No.I,
Erode
[FAC] Judicial Magistrate,
Perundurai

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