



Crl.R.C.(MD).No.200 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Dated: 05.01.2023

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGOVAN

Crl.R.C.(MD).No.200 of 2022
and Crl.M.P.(MD).No.2937 of 2022

M.S.M.R.Srinivasagam

... Petitioner

Vs.

Joseph

... Respondent

PRAYER: This Criminal Revision Case is filed under Sections 397 and 401 of the Criminal Procedure Code, to call for the records in Crl.M.P.No. 3003 of 2021 in C.C.No.28 of 2015 on the file of the Judicial Magistrate, Fast Track Court (Magisterial Level), Kovilpatti and set aside the order, dated 16.11.2021.

For Petitioner : Mr.S.Pon Senthil Kumaran

For Respondent : Mr.P.Selva Kamatchi

ORDER

This Criminal Revision Case has been filed against the order of dismissal that was passed by the trial Court dismissing the petition that was filed by the revision petitioner seeking permission for leading secondary



evidence.

WEB COPY

2.The facts in brief:

The revision petitioner filed a private complaint under Section 200 Cr.P.C. against the respondent for the offences punishable under Section 138 of the Negotiable Instruments Act. So along with the above said complaint, he submitted the original cheque before the trial Court. After presenting the complaint, he got the original cheque returned and thereafter, it was found missing. In spite of his best efforts, he could not find out the missing cheques. So he filed the above said petition and that came to be dismissed by the trial Court finding that the conditions for leading the secondary evidence has not been full filled and there is no proof to show the loss of the original document.

3.Only a short point arises for consideration as to whether the original document is missing or not, which is matter of fact, which got to be proved by the revision petitioner at the time of trial.

4.The above said fact cannot be decided on the basis of petition. The evidence ought to have been recorded by the trial Court and only during the



5. Even though the counsel for the revision petitioner relied upon the that has been passed by this Court in the case of *N. Jayalakshmi Vs. Manan* in *Crl.R.C.(MD).No.161 of 2014* and the Judgment of the Honorable Madhya Pradesh High Court in the case of *Sailendra Jain Vs. Ashish Jain*, I am of the considered view that the matter can be remitted to the trial Court with directions.

6. Accordingly, this criminal revision case is **allowed**. The matter is



Crl.R.C.(MD).No.200 of 2022

remitted back to the trial Court concerned with the following directions.

The petition that has been filed by the revision petitioner shall be restored to the file of the trial Court and the petitioner must be given opportunity to lead evidence in the main case itself to lay foundational facts for leading the secondary evidence. After the foundational facts are brought on record, the question with regard to secondary evidence may also be decided by the trial Court. Consequently, connected miscellaneous petition is closed.

05.01.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No

TM

To

- 1.The Judicial Magistrate, Fast Track Court, (Magisterial Level), Kovilpatti.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



Crl.R.C.(MD).No.200 of 2022

G.ILANGOVA N,J.

TM

Crl.R.C.(MD).No.200 of 2022

05.01.2023