



Crl.R.C.(MD).No.269 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 04.07.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC(MD)No.269 of 2023

and

Crl.MP(MD)No.3925 of 2023

A.Sadaram

... Revision Petitioner/Complainant

Vs.

K.Srinivasan

... Respondent/Accused

PRAYER: Criminal Revision Petition has been filed under Section 397 and 401 of Cr.P.C., to call for the records in Cr.MP.No.6477 of 2022 in STC.No.418 of 2019 on the file of the learned Judicial Magistrate, Vadipatti, and set aside the order dated 15.12.2022.

For Petitioner : Mr.N.Anantha Padmanabhan, Senior Counsel
for M/s.APN Law Associates

For Respondent : Mr.M.Pitchaimuthu



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ORDER

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The defacto Complainant in STC.No.418 of 2019 on the file of the learned Judicial Magistrate, Vadipatti, filed this Revision challenging the impugned order passed in Cr.MP.No.6477 of 2022, which has been filed for marking certain documents.

2.The petitioner initiated the proceedings under 138 Negotiable Instruments Act, against the respondent/accused. The respondent filed the petition under Section 65(A) of Indian Evidence Act, to receive the additional document on his side. The said plea was objected by the petitioner. Without considering the said objection, the learned trial Judge, by the impugned order dated 15.12.2022, partly allowed the petition and permitted the respondent to mark the documents except one document. Challenging the same, the petitioner filed this Revision.

3.1. The learned Senior Counsel appearing for the petitioner would submit that the learned Judicial Magistrate, Vadipatti, without recording any objection and considering the merits of his submission, allowed the respondent to mark the documents.



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3.2. The learned Senior Counsel further submit that the documents are the secondary evidence and admissibility and reliability to be tested by the learned trial Judge considering the petitioner's objection. The learned Senior Counsel in addition to the above, submit that in the diary extract, it was noted as Cr.MP.No. 6477 of 2022 was dismissed. But, the petition was disposed of. So, the learned Senior Counsel submitted that the petitioner is under the *bona fide* impression that the petition was dismissed. But, in the impugned order, the learned trial Judge was allowed to mark the documents.

4. The learned counsel for the respondent submitted that the accused never issued the cheque to the defacto complainant as alleged in the complaint. To prove the same, these documents are relevant. The police officer conducted enquiry and closed the petition. Since the originals are available with the Police Department, he obtained xerox copy of the documents and produced the same before Court below and the same was rightly allowed by the trial Judge. Hence, he seeks for dismissal of this petition.

5. Upon perusal of the order and the diary extract, it is clear that the petition is disposed of. But, in the notes of the learned trial Judge, inadvertently



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stated that Cr.MP.No.6477 of 2022 was dismissed. In the considerable opinion of this Court, the same was happened inadvertently. So, the impugned order is not liable to be set aside on that ground.

6.The main grievance of the learned Senior counsel appearing for the petitioner is that the learned trial Judge marked the documents without noting the objection of the petitioner. The said learned Senior Counsel submission is correct at this stage for the reason that the respondent marked the Xerox copy of the documents. Hence, the learned trial Judge ought not to have allowed to mark the documents without subject to the proof and admissibility. So, the learned Senior Counsel rightly placed reliance the decision of the Hon'ble Supreme Court in **R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple.**

7.On the basis of the decision of the Hon'ble Supreme Court in **R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple**, reported in **(2003) 8 SCC 752**, if the party has not raised any objection at the time of marking the document, the party could not permitted to raise the admissibility and reliability at the time of the final hearing. So, grievance of the petitioner is *bona fide* one and the same has to be addressed so as to avoid injustice caused to him.



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8.Hence, this Court is inclined to dispose the Revision with the following direction:-

The learned trial Judge is hereby directed to consider the objection of the petitioner with regard to admissibility and reliability of the documents marked by the respondent as per the order in Crl.MP.No.6477 of 2022 dated 15.12.2022 at the time of argument of the case.

9.With the above direction, this Criminal Revision Case is disposed of accordingly. Consequently, connected miscellaneous petition is closed.

04.07.2023

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

- 1.The Judicial Magistrate,
Vadipatti.
2. The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

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