



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.05.2023

CORAM:

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

CrI.O.P.(MD) No.8891 of 2023

and

CrI.M.P.(MD).No.7435 of 2023

C.Govindaraj

...Petitioner

vs.

C.Tirunavukarasu

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the entire records pertaining to the docket order passed in S.T.C.No.406 of 2022 on the file of the District Munsif Cum Judicial Magistrate, Orathanadu, Thanjavur District, vide docket order dated 21.02.2023 and set aside the same.

For Petitioner : Mr.R.L.Dhilipan Pandian

ORDER

This petition has been filed to set aside the docket order passed in S.T.C.No.406 of 2022 dated 21.02.2023, on the file of the District Munsif cum Judicial Magistrate, Orathanadu, Thanjavur District.



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2. The petitioner and respondent are the brothers. The petitioner borrowed a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) from the complainant on 09.07.2022 for business purposes and had failed to repay the same. The petitioner is said to have issued three cheques dated 29.07.2022 and 29.09.2022 respectively. The above said cheques were dishonoured by bank for reasons “insufficient Funds” in the petitioner's account. The respondent has sent a notice on 11.10.2022 and filed private complaint before the District Munsif cum Judicial Magistrate, Orathanadu, Thanjavur District, under Section 138 of NI Act. The learned trial Judge, proceeded for 313 Cr.P.C., proceedings against the petitioner without examining the complainant. Hence, the petitioner preferred the present Criminal Original Petition before this Court.

3. The learned counsel for the petitioner submitted that the learned trial Judge while questioning the petitioner under Section 313(1)(b) of Cr.P.C., had failed to take note of the fact that the complainant had not even examined in chief. Further, he would submit that the defence witness is ex-facie and illegal. The petitioner hereby reserved his right of raising additional points prior to disposal of the main Criminal Original Petition. Hence, prayed to allow this petition.



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4. Heard the learned counsel appearing for the petitioner and perused the materials on record.

5. On perusal of records it shows that the learned trial judge ought to have considered all the points, which have been raised by the petitioner. In this case, the learned Judge while questioning the petitioner under Section 313(1)(b) of Cr.P.C., had failed to take note of the fact that the complainant had not even examined in chief. Hence, this Court is inclined to set aside the docket order passed by the trial Court as it is the case of non-compliance of procedural property.

6. In view of the above, the docket order passed in S.T.C.No.406 of 2022 dated 21.02.2023, on the file of the District Munsif cum Judicial Magistrate, Orathanadu, Thanjavur District is set aside. Accordingly, this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petition is closed.

18.05.2023

Internet :Yes/No
Index :Yes/No
Speaking/Non speaking order



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To

1. The District Munsif cum Judicial Magistrate,
Orathanadu, Thanjavur District.



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T.V.THAMILSELVI. J.,

sbn

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