



CrI.O.P.(MD)No.12980 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 07.09.2023

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

CrI.O.P.(MD)No.12980 of 2023 and
CrI.M.P(MD).No.10157 of 2023

K.Suresh

... Petitioner

Vs.

V. Manoharan

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the Cr.M.P.No.3394 of 2023 in STC.No.17 of 2021 on the file of the Fast Track Court (Magistrate Level), Kovilpatti, Tuticorin District and set aside the same.

For Petitioner : Mr.J. Parekhkumar

For Respondent : Mr.S. Ramasamy

ORDER

This petition is filed seeking to intervene the order passed by the Fast Track Court (Magistrate Level), Kovilpatti, Tuticorin District, by



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setting aside the same, which was filed for recalling of DW.1.

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2. According to the petitioner/accused, the respondent/complainant has filed a complaint under Section 138 of Negotiable Instruments Act alleging that the cheque bearing No.048149, dated 19.04.2021 for a sum of Rs.15,00,000/- issued by the petitioner / accused in favour of the respondent said to have been dis-honoured when he has presented in the bank. Accordingly, the respondent / complainant filed complaint under Section 200 Cr.P.C., alleging that the petitioner/accused has committed the offence under Section 138 of Negotiable Instruments Act. During the course of trial, after examination of the witnesses by the respondent / complainant, the petitioner examined Bank Manager as DW.1. When the case is posted for arguments, the petitioner / accused has filed criminal petition in Crl.M.P.No.3394 of 2023, for recalling of re-examination of DW.1 and the same was dismissed by way of impugned order by the trial Court. Therefore, this petition is filed.

3. It is submitted by the learned counsel for the petitioner that recalling of DW.1, the Bank Manager, Tamil Nadu Mercantile Bank, Kovilpatti Branch is necessary in order to prove that as on the date of



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alleged advancement of Rs.15,00,000/- by the respondent / complainant to the petitioner / accused, the respondent / complainant was not having sufficient funds in his Bank account, thereby, wanted to prove his defence that the respondent / complainant has no capacity to advance the loan.

4. The learned counsel for the respondent / complainant strongly objected stating that the petitioner was given sufficient opportunity to question any aspect when he has permitted to examine the DW.1 and having availed an opportunity, when the matter was posted for arguments, the petitioner is not expected to file an application to recall DW.1.

5. Herd both sides and perused the materials available on record.

6. Section 311 Cr.P.C., reads as follows:

“311. Power to summon material witness, or examine person present – Any Court may, at any stage of any inquiry, trial or other proceedings under this Cord, summon any person as a witness, or examine any person in attendance,, though not summoned as a witness, or recall and re-examine any person already examined, and the Court shall summon and examine to recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the



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that he has withdrawn the money from the Bank account and advanced money to the petitioner.

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10. When the respondent has advanced money in cash, the question whether the respondent has sufficient funds in his bank account is immaterial to the issue pending before this Court in this case.

11. In view of the above, the trial Court has not committed any error in dismissing the petition filed by the petitioner and hence, this Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed.

07.09.2023

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



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To

1. The Fast Track Court (Magistrate Level), Kovilpatti, Tuticorin District

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR.D.NAGARJUN,J

trp

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