



Crl.RC.(MD).No.856 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	08.09.2023
Pronounced On	17.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC(MD).No.856 of 2023
and
Crl.M.P.(MD).No.11397 of 2023

1.M/s.Rasi Industries,
Rep by its Partner,
Ganapathy Velsamy

2.Ganapathy Velsamy

3.G.Vidhyadevi
Petitioners

..

Vs.
K.Ashokkumar
Respondent

..

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records in connection with the order passed by the learned District Munsif Cum Judicial Magistrate, Aravakurichi in Cr.M.P.No.956 of 2023 in S.T.C.No.117 of 2019, dated 27.04.2023 and to set aside the same.



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For Petitioners : Mr.N.Sathish Babu

For Respondent : Mr.V.Balaji

ORDER

The Criminal Revision case has been filed as against the impugned order in Cr.M.P.No.956 of 2023 in S.T.C.No.117 of 2019, dated 27.04.2023, passed by the learned District Munsif cum Judicial Magistrate, Aravakurichi.

2. The respondent herein has initiated the proceedings against the petitioners under Section 138 of the Negotiable Instruments Act, on 17.03.2015, alleged that the second petitioner herein has borrowed a sum of Rs.97,50,000/- for the purpose of his business needs and issued cheques of Canara Bank and Indian Overseas Bank for the security purpose and promised to repay the same on or before 25.01.2015. Thereafter, the petitioners issued a cheque for discharging the debt amount and the same was dishonoured. Therefore, the respondent herein has issued a statutory notice. Thereafter, he filed a private complaint before the learned District Munsif Cum Judicial Magistrate, Aravakurichi, the same was taken on file in S.T.C.No.117 of 2015. The case was posted for examination of the petitioner's side evidence.



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3. At this stage, the petitioners filed a petition in Cr.M.P.No.956 of 2023, under Section 254(2) of Cr.P.C., to examine the District Commissioner of Police and other police officers. In the petition, it is stated that there was a complaint made by the respondent before initiation of the proceedings under Section 138 of the Negotiable Instrument Act. During enquiry, the cheque was obtained. To prove the same, he called the police officer to examine on the side of the petitioners. The said petition was dismissed by the learned trial Judge, stating that the examination of the police officer is not necessary to prove the debt was not obtained by the petitioners. The issuance of cheque is admitted and hence, it is the duty of the respondent and complainant to produce the evidence regarding the prosecution.

4. In this case, P.W.1 was examined long before in the year 2016 and the case was posted for the examination of the petitioners side evidence. At this stage, the petitioners have filed a petition to prolong the case. Further, the learned trial Judge has held that the criminal case has to be decided on the facts. Any admission during the course of enquiry is not admissible in evidence. In the said circumstances, the learned trial Judge, dismissed the petition.



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5. The learned counsel for the petitioners stated that before initiation of the proceedings, the respondent made a complaint before the Contonment Police Station. Pursuant to which, the police officers, conducted enquiry. In the said enquiry, there was a detailed report and the same was relevant to decide the issuance of cheque. Hence he seeks to set aside the impugned order passed by the learned trial Judge.

6. Per contra, the learned counsel for the respondent submitted that the enquiry report and complaint before the respondent police is not admissible in evidence. The police officer's evidence is not necessary to disprove the presumptions arose under Section 139 of the Negotiable Instrument Act. Therefore, he seeks for dismissal.

7. This Court considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record.

8. The learned trial Judge correctly held that the petitioners filed this petition to examine the police officer on his side to prove the complaint made much



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earlier. The learned trial judge has correctly dismissed the petition. The petitioners intended to prolong the case filed this petition. In the said circumstances, this court finds no merit in the contention of the petitioners.

9. Apart from that, as rightly pointed out by the learned counsel for respondent that the police report and the statement is not admissible for any purpose in any Court. The issuance of cheque is admitted by the petitioners. Only defence is that the same was issued at the instigation of the police officer and the same is to be proved through the legal evidence to prove defence of the petitioners and the examination of the police officer is not necessary. In the said circumstances this court finds no merit in this case.

10. The other relief sought by the petitioners about the examination of the Bank Manager, Canara bank is also not necessary. If any witness is not examined on the side of the complainant to prove the case, the same can be taken as adverse inference under Section 114 of the Indian Evidence Act.



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11. In the said circumstances, the examination of the bank manager also is not necessary to prove the case of the defence that the cheque was not issued as alleged by the petitioners. Therefore, this court finds no merit in the case. Hence, the order of the learner trial Judge is hereby confirmed.

12. Accordingly, this Criminal Revision Case stands dismissed. Consequently, connected Miscellaneous Petition is closed.

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

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