



Crl.O.P.(MD)No.15710 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	11.09.2023
Delivered on	25.09.2023

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

Crl.O.P.(MD)No.15710 of 2023
and
Crl.M.P.(MD) No.12486 of 2023

Vanasekar

... Petitioner/
Accused

Vs.

S.Ratheesh Selvarajan

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside order dated 21.08.2023 passed in Cr.M.P.No.2793 of 2023 in C.C.No.37 of 2018 on the file of the Judicial Magistrate, Fast Track Court at Magistrate Level, Palani.

For Petitioner : Mr.T.Lenin Kumar



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ORDER

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This petition is filed challenging the orders passed by learned Judicial Magistrate, Fast Track Court, Palani, rejecting the request of the petitioner to recall the witnesses in Cr.M.P.No.2793 of 2023 in C.C.No. 37 of 2018.

2. The facts and brief of the affidavit filed in support of this petition is concerned that the petitioner is accused in C.C.No.37 of 2018 on the file of learned Judicial Magistrate, Fast Track Court at Magistrate Level, Palani filed under Section 138 of the Negotiable Instrument Act by the respondent/complainant.

3. During the course of enquiry and trial the P.W.1 did not produce the cheque at the time of filing of complaint and later he came up with a copy of the complaint dated 14.09.2018 filed by the respondent's advocate along with receipt of CSR dated 14.09.2018 and the certificate issued by the Inspector of Police dated 15.09.2018 that respondents advocate misplaced his bag along with original cheque and the case bundle when the advocate is taking tea at Ponnamaravathi bus stand on



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14.09.2018 and on the strength of the said photocopy of the cheque was marked before the Court with the objection of the petitioner/accused.

After completion of the respondent/complainant's side evidence the original cheque was also traced and marked as Ex.P9.

4. The petitioner/accused stated to have taken a specific stand in his reply notice that he has borrowed Rs.50,000/- from the respondent/complainant's father and as a security at that time he has issued unfilled cheque and promissory notes in favour of respondent's father. On 16.09.2015, the petitioner has returned the said borrowed money to the father of the respondent. On account of confidence of the respondent's father, the petitioner did not take the unfilled cheque and promissory notes from the father of the respondent. After the death of the respondent's father in the year 2016, the petitioner has requested the respondent to return the unfilled cheque and promissory notes. It was declined while asking that he could not traced the documents.

5. The petitioner has filed an application under Section 311 of Cr.P.C for examination of respondent's counsel and the Inspector of



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Police who issued non-traceable certificate but the said petition was dismissed on the ground that the petitioner is dragging the case. It is submitted by learned counsel for the petitioner that the petitioner has got every right to examine any person thereby trial Court should have allowed his application.

6. When this matter came up for admission, the petition was dismissed at the admission stage on account of the following reasons:-

(i) There is no dispute that the cheque which was dishonoured on the presentation made by the respondent/complainant which was belonging to that of the petitioner;

(ii) According to the petitioner, there are no transactions between the petitioner and the respondent, however, the cheque which was presented by the defacto complainant was given in blank by the respondent's father when he has borrowed money as a security, though he has returned the money to the respondent/complainant, he could not take



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back the cheque and after the death of the respondent's father, the respondent has filed a false case on the said cheque.

7. Once the petitioner has admitted that the cheque which was dishonoured belonging to him the transaction under Section 139 will be raised against the petitioner and the petitioner is expected to prove that it was not given for illegal consideration. In order to prove that the petitioner has not given the cheque to unlawful consideration, the petitioner is expected to produce the evidence to the effect that he has borrowed Rs.50,000/- from the father of the respondent and that he has given cheques and promissory notes duly signed to the father of the respondent and that he has returned Rs.50,000/- to the father of the respondent and that he has not taken the cheques and promissory notes from the father of the respondent. In order to prove this defect, the petitioner can file any document or produce any number of witnesses.

8. However, the purpose for which the petitioner has filed Cr.M.P.No.2793 of 2023 in C.C.No.37 of 2018 before the trial Court is for different purpose. The respondent/complainant has not filed original



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cheque before the Court along with the complaint. After some time, he has filed photocopy of the cheque along with copy of complaint stating that the original cheque was misplaced by the respondent's counsel and thereby the photocopy of the cheque was marked. Subsequently, the respondent/complainant has filed original cheque stating that the original cheque was traced and the same was marked. According to the petitioner, there is a mischief in projecting before the Court by the respondent/complainant that original cheque was lost and subsequently traced out and in respect of the petitioner intention to examine the respondent's counsel and the Inspector of Police who has issued a non-traceable certificate to the effect that the cheque was not traced.

9. No purpose would be resolved by examining those two witnesses. Even if whatever the petitioner intending to prove before the Court of alleged mischief or other thing by the counsel, it will not in anywhere support the case of the petitioner or diminishes the case of the respondent/complainant. Whether the respondent has filed the cheque along with the complaint or subsequently whether the respondent files only photocopy of the cheque will not in any way affect the case of the



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respondent/complainant. This is because the petitioner has not disputed in respect of cheque and the signature in the cheque. Therefore, there is no dispute in respect of cheque or signature on the cheque whether original cheque is filed or photocopy of the cheque is filed along with the application, however, the petitioner is expected to prove as to how he has issued a blank cheque and promissory notes to the father of the respondent and why he has not taken them back after discharge of the loan amount. Unless until he proves his defence, the petitioner has no case, irrespective of the fact whether original cheque is filed or not. However, the case on hand, having admitted the complainant's case in respect of cheque on account of presumption raised against the petitioner, the only opportunity for the petitioner to prove his defence is by way of preponderance of probability since the father of the respondent is no more today. The trial Court has ultimately rightly dismissed the petition to recall to examine the advocate of the respondent and the Inspector of Police under Section 311 of Cr.P.C.



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10. In view of the above, this petition is devoid of merits and accordingly, the same is dismissed. Consequently, the connected miscellaneous petition is closed.

25.09.2023

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

PKN/mvs.

To

1. The Judicial Magistrate Fast Track Court,
Palani.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

DR.D.NAGARJUN,J



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PKN/mvs.

Pre-delivery order made in
Crl.O.P.(MD)No.15710 of 2023

25/9/2023