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Crl.R.C.No.400 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**Crl.R.C.No.400 of 2021
And
Crl.M.P.No.6434 of 2021**

V.Meenatchi

... Petitioner

Vs.

Uma

... Respondent

Prayer:

Criminal Revision Case filed under Section 397 (1) and 401 of Criminal Procedure Code, seeking to set aside the order dated 23.02.2021 passed by the learned II Additional District and Sessions Judge at Puducherry in Criminal Revision No.6 of 2018.

For Petitioner : Mr.T.Sai Krishna
for M/s.L.Poovendra Perumal
For Respondent : Mr.T.M.Naveen

O R D E R

The criminal revision case has been filed seeking to set aside the order dated 23.02.2021 passed by the learned II Additional District and Sessions Judge at Puducherry in Criminal Revision No.6 of 2018.



CrI.R.C.No.400 of 2021

WEB COPY

2.The learned counsel for the petitioner submitted that the petitioner lost her cheque book on 24.03.2015 at Puducherry bus stand and she informed the same to the Orleanpet Police Station and to the Federal Bank, Nellithope Branch on the same day and the cheque book contained some signed empty leaves of cheque. To the shock and surprise of the petitioner, the respondent issued a statutory legal notice to the petitioner on 09.06.2016 stating that she had advanced a loan of Rs.10 Lakhs to the petitioner on 10.02.2016 and in order to discharge the same, the petitioner issued a post dated cheque to the respondent on 01.05.2016 bearing no.079035 and when the said cheque when presented for collection on 01.06.2016, it was returned for the reason 'account closed'. Hence, the petitioner lodged complaint as against the respondent before the law enforcing agency.

3.The learned counsel for the petitioner further submitted that on enquiry the law enforcing agency found that the respondent has filed S.T.C.No.571 of 2016 before the learned Judicial Magistrate III at Puducherry under Section 138 of the Negotiable Instruments Act and under Section 420 of I.P.C. and the law enforcing agency closed the complaint. Hence the petitioner filed private complaint in C.C.No.46 of



CrI.R.C.No.400 of 2021

2018 before the learned Judicial Magistrate II, Puducherry for the offences under Sections 193, 209, 379, 420, 463, 461 and 467 of I.P.C. and the learned Judicial Magistrate II, Puducherry, took cognizance against the respondent and challenging the same, the respondent filed Criminal Revision No.6 of 2018 before the learned II Additional District and Sessions Judge at Puducherry and the said revision was allowed and the order passed by the learned Judicial Magistrate – II, Puducherry in issuing summons to the respondent under Section 204 of Cr.P.C. was revoked, which is not sustainable one.

4.The learned counsel for the petitioner further submitted that since the revision arises out of the defence of the petitioner before the trial Court in which the petitioner is facing stand as accused under Section 138 of the Negotiable Instruments Act, if any verdict given as against the cognizance taken by the lower Court as against the respondent, it will adversely affect the interest of the petitioner. Hence, this Court may set aside the impugned order and transfer C.C.No.46 of 2018 from the file of the learned Judicial Magistrate II, Puducherry to the file of the learned Judicial Magistrate III at



CrI.R.C.No.400 of 2021

Puducherry to be tried along with S.T.C.No.571 of 2016 filed under Section 138 of the Negotiable Instruments Act simultaneously. In support of his contentions, the learned counsel relied upon the decisions of the Hon'ble Apex Court reported in 1990 Supp Supreme Court Cases 145 [Nathi Lal and others Vs. State of U.P. and another] and (2001) 2 Supreme Court Cases 688 [Sudhir and others Vs. State of M.P.].

5.The learned counsel appearing for the respondent submitted that the respondent filed S.T.C.No.571 of 2016 in the year 2016 itself and the trial commenced on 20.04.2018. At this stage, in order to defeat the rights of the respondent, the petitioner filed complaint under Section 200 of Cr.P.C. in C.C.No.46 of 2018 after a lapse of three years from the date of the alleged occurrence, which is not sustainable. If at all there is any defence available to the petitioner, she can very well canvass the same, before the learned Judicial Magistrate III at Puducherry in S.T.C.No.571 of 2016 filed by the respondent. Though there are arguable points, this Court may grant liberty to the respondent to raise all the points before the learned Judicial Magistrate III at Puducherry in S.T.C.No.571 of 2016.



CrI.R.C.No.400 of 2021

WEB COPY

6. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent.

7. The facts in the case is not in dispute. Admittedly, the respondent filed S.T.C.No.571 of 2016 before the learned Judicial Magistrate III at Puducherry under Section 138 of the Negotiable Instruments Act and under Section 420 of I.P.C. and the same is pending trial. The petitioner claim that the petitioner lost her cheque book on 24.03.2015 at Puducherry bus stand and she informed the same to the Orleanpet Police Station and to the Federal Bank, Nellithope Branch on the same day and the cheque book contained some signed empty leaves of cheque. To the shock and surprise of the petitioner, the respondent issued a statutory legal notice to the petitioner on 09.06.2016 stating that she had advanced a loan of Rs.10 Lakhs to the petitioner on 10.02.2016 and in order to discharge the same, the petitioner issued a post dated cheque to the respondent on 01.05.2016 bearing no.079035 and when the said cheque when presented for collection on 01.06.2016, it was returned for the reason 'account closed'. Hence, the petitioner lodged complaint as against the respondent before the law enforcing agency and since there was no



CrI.R.C.No.400 of 2021

action, the petitioner filed private complaint in C.C.No.46 of 2018 before the learned Judicial Magistrate II, Puducherry for the offences under Sections 193, 209, 379, 420, 463, 461 and 467 of I.P.C. and the learned Judicial Magistrate II, Puducherry.

8.However, the fact remains that the instrument which was allegedly lost by the petitioner is the subject matter of the complaint filed by the respondent. Hence this Court rendering any opinion on the merits of the case will adversely affect the interest of the parties. Even the cognizance taken by the trial Court was set aside by the lower Appellate Court does not prejudice the petitioner to canvass all the points before the learned Judicial Magistrate III at Puducherry in S.T.C.No.571 of 2016. Hence, the impugned order warrants no interference.

9.The decisions relied upon by the learned counsel appearing for the petitioner is not applicable to the present case since the case in the decisions arise out of the offence under I.P.C. and not under The Negotiable Instruments Act.



CrI.R.C.No.400 of 2021

10.The criminal revision case is dismissed. The learned Judicial Magistrate III at Puducherry is directed to permit the petitioner to take her defence in S.T.C.No.571 of 2016 and is further directed to decide the issue on merits and in accordance with law, as expeditiously as possible. Consequently, the connected miscellaneous petition is closed.

23.07.2024

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Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

To

1.The II Additional District and Sessions Judge at
Puducherry.

2.The Judicial Magistrate No.III,
Puducherry.



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M.DHANDAPANI,J.
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