THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2024
Coram

The Honourable **Mr.Justice Sunder Mohan**

Crl.R.C.Nos.2242, 2337, 1624, 1640, 1660 and 1682 of 2024 (six cases)
&
Crl.M.P.No.17519, 18056, 13469, 13585, 13777 & 13868 of 2024

Crl.R.C.No.2242 of 2024 :-

Jinna Basha,M. ...Petitioner in all Crl.R.Cs.

Vs.

M/s. HDFC Bank Ltd.,
Having its registered Office at
HDFC Bank House, Senapati Bapat Marg,
Lowe Parel (West) Mumbai – 400 013
Having its Branch Office at "Ceebros Building'
No.110, Nelson Manickam Road,
Aminjikarai,CHennai – 600 029.
rep. By its Power of Attorney Holder
Mr.Ramakrishnan. ...Respondent/Complainant in Crl.R.Cs.

Prayer in Crl.R.C.No.2242 of 2024:-

Criminal Revision Petition filed under Section 438 & 442 of BNSS Act, 2023 to call for the entire records in connection with Crl.M.P.No.28133 of 2024 dated 23.05.2024, in S.T.C.No.5664 of 2023, pending on the file of the learned FTC II, Metropolitan Magistrate Court, Egmore, Allikulam, Chennai and to set aside the same.

For Petitioner in all Crl.R.Cs. : Mr.T.Shanmugaboopathi

For Respondent in all Crl.R.Cs. : Mr.T.G.Madhuvareshwaran

Common Order

These Criminal Revision Petitions have been filed challenging the dismissal of the applications filed by the petitioner for examination of three witnesses in two cases under Section 138 of the Negotiable Instruments Act, in which, the petitioner is facing trial.

2. The petitioner is facing trial in two cases in STC Nos.5664 of 2023 and 5316 of 2023, filed under Section 138 of the Negotiable Instruments Act.

3. It is the case of the respondent that the respondent issued two cheques for Rs.4,10,000/- and Rs.2,20,000/- respectively, pursuant to a compromise arrived at pending the complaint lodged by the respondent for cheating and misappropriation before the Superintendent of Police, Chengalpet; that the petitioner had obtained a loan for purchase of a vehicle and entered into a loan agreement, agreeing to repay the loan amount in

instalments of Rs.25,000/- per month and also given ECS Mandate instructions; that the petitioner had forged the signature of the respondent to make it appear that the hypothecation was cancelled and transferred the vehicle to a third party and hence, a complaint was lodged before the Superintendent of Police, Chengalpet; that the petitioner had entered into a compromise with the respondent and agreed to pay the balance sum of Rs.10,40,000/- in three instalments and accordingly, issued three cheques and honoured the cheque issued for the 1st instalment of Rs.4,10,000/- and dishonoured the remaining two cheques for Rs.4,10,000/- and Rs.2,20,000/-, as stated earlier; that when the said cheques were presented for collection, they were returned unpaid for the reason, 'Payment Stopped by Drawer'; and that inspite of statutory notice, the petitioner did not make payment and hence, two complaints were filed.

4. Pending trial in the two cases, the petitioner filed three petitions in each of the complaints to summon three witnesses. The first petition was filed to summon the Inspector of Police, Ambattur, before whom, the petitioner is said to have made a complaint that the car was forcibly taken

and sold to a third party by the respondent; the second petition was filed to summon the Manager of the respondent Bank, who had lodged a complaint before the Superintendent of Police, Chengalpet and who was aware of the compromise; and the third petition was filed to summon one Malathi, who had subsequently purchased the car from the petitioner. The said petitions were opposed by the respondent.

5. The Trial Court dismissed those Petitions on the ground that the same were filed only to procrastinate the proceedings and the examination of the witnesses were unnecessary for the purpose of this case.

6. The learned counsel for the petitioner would submit that the Inspector of Police before whom the petitioner lodged a complaint would prove that the petitioner aggrieved by the act of the respondent in taking away his car and making a sale, had made a complaint; that the Manager of the respondent Bank who had lodged a complaint against the petitioner before the Superintendent of Police, Chengalpet, would reveal the truth; that one Malathi, who is said to have purchased the car would state as to who

sold the car to her; and that all the three persons are relevant witnesses and hence sought for setting aside the orders passed by the trial Court, dismissing his petitions.

7. The learned counsel for the respondent, *per contra*, submitted that in the complaints, the respondent had clearly stated that three cheques were issued only pursuant to a compromise pending the complaint before the Superintendent of Police, Chengalpet and that one cheque was honoured and the petitions filed by the petitioner before the trial Court was only to delay the proceedings and therefore, the trial Court rightly dismissed those petitions.

8. Heard both sides and perused the materials placed on record.

9. **(a)** This Court, on perusal of the complaint filed under Section 138 of the N.I.Act finds that initially, a complaint was filed by the respondent before the Superintendent of Police alleging that the petitioner had forged the signature of the respondent to make it appear that the hypothecation was cancelled and transferred the car to a third party. At that stage, a

compromise was arrived at, which is not disputed. Therefore, any complaint given by the petitioner thereafter to the Inspector of Police, Ambattur, alleging that the respondent had taken away the car of the petitioner illegally, would not be of any relevance, especially when no action was taken by the Inspector of Police. In any case, if the petitioner wants to establish that a complaint was lodged, he could have filed a copy of the complaint along with the acknowledgement and hence, the examination of the Inspector of Police, Ambattur, is unnecessary.

(b) Similarly, the examination of the Bank Manager of the respondent is not necessary, since, the complaint before the Superintendent of Police, Chengalpet was not lodged by him in his personal capacity and if any fact had to be elicited by the petitioner, he could have done so from the representative of the respondent, who was examined on their behalf.

(c) Further, since the complaint lodged by the petitioner that the respondent had illegally sold the car to a third party was closed as 'mistake of fact', the examination of the third party viz., Malathi, is also not required to establish the defence of the petitioner.

10. That apart, the allegation against the petitioner in the complaint before the Superintendent of Police, Chengalpet, was that he had forged the signature of the officials of the respondent, cancelled the hypothecation and transferred the car to a third party. It is in this complaint, a compromise was arrived at and the subject cheques were issued to the respondent. In such circumstances, this Court is of the view that the trial Court was right in dismissing the petitions filed by the petitioner for summoning the witnesses and hence, this Court finds no reason to interfere with the orders passed by the trial Court. Accordingly, all the revisions are dismissed as devoid of merits. Consequently, connected Miscellaneous Petitions are closed.

21.12.2024

Index : yes/no
Neutral Citation : yes/no

ars/sd

To

The Metropolitan Magistrate Court,

FTC II, Egmore, Allikulam, Chennai.

Sunder Mohan, J.,

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