



1

Crl OP No.28931 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.No.28931 of 2023
and Crl MP No.20168 of 2023

P.Kavitha
W/o.Pandian,
Koiladi Namachikkadu,
Thillaivilaagam,
Thiruthuraipoondai Taluk,
Thiruvarur District

...Petitioner

Vs.

R.Swaminathan
Rajendran
Jampuvanodai Theriku
Thiruthuraipoondi Town,
Thiruthuraipoondi Police Limit,
Thiruvarur District

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the order of dismissal passed in CMP No.3037 of 2023 in STC No.15 of 2019 dated 06.10.2023 by the learned Judicial Magistrate (FTC), Thiruthuraipoondi, Tiruvarur District.

For Petitioner

: Mr.G.Manuraj

ORDER

This Criminal Original petition has been filed challenging the



order passed by the Court below in CMP No.3037 of 2023 in STC No.15 of 2019 dated 06.10.2023. The application was filed by the petitioner under Section 91 of Cr.PC seeking for a direction to the respondent to produce documents marked in Sl No.1 to 7 of the application filed before the Court below.

2. This Court has carefully considered the submissions made by the learned counsel for the petitioner and the materials available on record.

3. The petitioner is facing trial before the Court below for offence under Section 138 of the Negotiable Instruments Act. The case of the respondent / complainant is that he had lent a sum of Rs.9,00,000/- by way of hand loan to the petitioner for his urgent needs. In discharge of that loan, the petitioner had issued a cheque for a sum of Rs,9,00,000/-. When this cheque was presented for collection, the same was returned with an endorsement "Insufficient funds". After the exchange of notices between the parties, the respondent filed a private complaint before the Court below against the petitioner for offence under Section 138 of the



Negotiable Instruments Act.

4. The respondent examined himself as PW1. The petitioner while examining the respondent /complainant was attempting to establish his defence to the effect that the respondent did not have the financial wherewithal to lend a sum of Rs.9,00,000/- to the petitioner. When the petitioner had put questions to the respondent as to whether he is in possession of the materials to establish that he had the financial wherewithal to lend such huge sums of money, the respondent had answered on the affirmative.

5. In the light of the answers that were given by the respondent during cross-examination, the petitioner in order to establish his defense and to rebut the presumption under Section 139 of the Negotiable Instruments Act, filed an application under Section 91 of Cr.PC for a direction to the respondent to furnish certain documents.

6. The respondent took a stand that except for the documents mentioned in Sl No.5 of the application, he does not possess any other



document that were sought for by the petitioner.

7. The Court below on considering the rival claims, came to a conclusion that the respondent had taken a stand that he does not have any document apart from the one which is mentioned in Sl.No.5 and that even if those documents are furnished, the same will not in any way establish the defence taken by the petitioner. In the light of this finding, the Court below dismissed the application filed by the petitioner. Aggrieved by the same, the present petition has been filed before this Court.

8. In the considered view of this Court, the petitioner has elicited certain answers from the respondent during the course of cross-examination. In order to substantiate those answers, the petitioner had sought for a direction to the respondent to furnish certain documents. The respondent for certain reasons, has taken a stand that he does not possess any document apart from the documents mentioned in Sl.No.5 of the application. Insofar as the documents in Sl.No.5 of the application, it will not really help the petitioner in his defence. Insofar as the other



documents are concerned, the petitioner has taken all efforts to get those documents brought into the case. If ultimately, the respondent is resisting the same, the petitioner can always establish her defense by asking the Court below to take adverse inference under Section 114(g) of the Indian Evidence Act. Ultimately, when such a defense is taken by the petitioner, it is for the Court below to deal with the same at the time of appreciation of evidence and take a decision in accordance with law. This clarity will sufficiently take care of the right of the petitioner. That apart, this Court does not find any ground to interfere with the order passed by the Court below. It is made clear that the observations made by the Court below in the order will not have any bearing while deciding the main case on merits and in accordance with law.

9. This Criminal Original petition is disposed of in the above terms. Consequently, the connected miscellaneous petition is closed.

03.01.2024

Index : Yes / No
Internet : Yes / No
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To

1. The Judicial Magistrate (FTC), Thiruthuraipoondi,
Tiruvarur District
2. The Public Prosecutor,
High Court of Madras,
Madras.



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7

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N.ANAND VENKATESH, J.,

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Dated:03.01.2024