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Crl.R.C.No.2090 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.03.2024

CORAM :

THE HONOURABLE Mr. JUSTICE **M.NIRMAL KUMAR**

Crl.R.C.No.2090 of 2023

and

Crl.M.P.No.19082 of 2023

H.Chandrasekaran

.. Petitioner

Vs.

V.Anitha

..Respondent

PRAYER : Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to set aside the order to obtain an expert opinion dated 12.10.2023 passed in Crl.M.P.No.1954 of 2023 in C.C.No.67 of 2022 on the file of the Judicial Magistrate, Fast Track Court (Magistrate Level) at Tiruvannamalai.

For Petitioner : Mr.R.Mohan

For Respondent : Mr.K.Gangadaran

ORDER

This Criminal Revision Case is filed under Section 138 of Negotiable Instruments Act, by the petitioner / complainant against the



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respondent / accused in C.C.No.67 of 2022. The petitioner, questioning the order passed by the trial Court in Crl.M.P.No.1954 of 2023, directing the respondent/accused to furnish transcripts of voice recording Ex.D2 which is filed by way of Compact Disk [CD] and forwarding the CD [Ex.D2] to the Deputy Director, Forensic Department, Chennai and the consequential orders, has filed this revision case.

2. The contention of the petitioner is that the petitioner/complainant has filed the case against the respondent/accused. He had filed his proof affidavit as per Section 145 of the Negotiable Instruments Act. Thereafter, the petitioner was cross examined in detail by the accused. On closure of the complainant's side evidence, the accused had examined herself as DW.1 and her husband Velavedan as DW.2. It is seen that through DW.2, one diary in which some accounts have been written was marked as Ex.D1 and audio recordings between the petitioner and DW.1 has been marked as Ex.D2. Thereafter, a petition under Section 73 of Evidence Act was filed, which the trial Court ought to have rejected on the face of it since Section 73 of Evidence Act



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pertains to examination of handwriting, but it had entertained the same and passed the above impugned order, which is against the established principle and procedure. Hence, the order is perverse and to be set aside.

3. The learned counsel for the respondent submitted that the trial Court had encouraged filing of proof affidavit of the defence witnesses and hence DW.1 and DW.2 had filed proof affidavit. Further, the petitioner/complainant had cross examined DW.1 and DW.2 and now the petitioner/complainant raising objection in the procedure is not proper. He further submitted that the respondent is facing trial under Section 138 of N.I.Act and as per Sections 119 and 139 of N.I.Act statutory presumption stares against the respondent, it is the respondent to discharge the statutory presumption. For that reason DW.1 and DW.2 were examined and marked Ex.D2 and same has been forwarded to forensic examination to prove the voice conversation between the petitioner and DW.2, which would clearly prove the falsify of the case against the respondent.



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4. According to the respondent, the petitioner and DW.1 are business partners of a finance company and at that time, the cheque was obtained by the petitioner from her husband DW.2 on an undertaking that it would be used as a security for finance business. On the other hand it has now been filled up and the case has been registered. The cheque has been issued to discharge the respondent's liability. There is no liability existing between the respondent and the complainant. Hence the order of the trial Court needs no interference. Thus, opposed the petition.

5. Considering the submission and perusal of the materials, it is seen that the evidence of DW.1 and DW.2 taken proof affidavit, which is not contemplated in law. Explanation was sought from the Presiding Officer and in his reply it is stated that the following decision in 2005(2) CTC 288, the respondents were allowed to file proof affidavit. Later the Presiding Officer came to know that the said position had been overruled and now it is not proper and correct in law to receive the evidence of the defence witness by way of proof affidavit.



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6. Further, it is seen that as per Section 143 of N.I.Act, the cases under Section 138 of N.I.Act, to be tried summarily and the trial of the cases to be continued on day to day basis and further trial to be concluded within six months. In this case it has not been done so. Further, DW.1 claimed that she had given the cheque to DW.2/her husband, who had handed over to the petitioner. Thereafter, the conversation recorded between the petitioner and DW.2 produced in CD is without Section 65-B certificate. Admissibility of the electronic evidence is subject to Section 65-B of the Evidence Act, which has been reiterated by the Apex Court in Anwar case. Section 143 of N.I.Act, how the trial to be conducted is stipulated. In view of the same, this Court set asides the order passed by the trial Court. The evidence of defence witnesses to be recorded in the manner known to law.

7. It is seen that the case reached penultimate stage. Already the complainant's defence arguments were closed and posted for arguments of respondent/accused. Hence, there shall be a direction to



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give an opportunity to the defence to produce the evidence in the manner known to law and Trial Court receive the same as prescribed. In view of the above, the trial Court is directed to conclude the trial within a period of two months from the date of receipt of a copy of this order. The evidence recorded previously is eschewed, from the case records.

8. With the above directions, ***this Criminal Revision Case is allowed.*** Consequently, the connected Criminal Miscellaneous Petition is closed.

01.03.2024

Internet : Yes/No

Index: Yes/No

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To

The Judicial Magistrate, Fast Track Court (Magistrate Level) at Tiruvannamalai.



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M.NIRMAL KUMAR, J.

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