



Crl.R.C.(MD).No.585 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 31.07.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD)No.585 of 2024
and
Crl.M.P.(MD).No.5992 of 2024

V.Dhanabal

... Petitioner

Vs.

S.Velmurugan

... Respondent

PRAYER: Criminal Revision Petition has been filed under Section 397(i) and r/w 401 of Cr.P.C., to call for the records and set aside the order dated 26.03.2024 made in Crl.M.P.No.2447 of 2023 in S.T.C.No.164 of 2022 on the file of the learned Judicial Magistrate Cum Fast Track Court, Magisterial Level, Pattukottai, Thanjavur and allow the above Criminal Revision Petition.

For Petitioner : Mr.B.Jameelarasu
For Respondent : Mr.B.Anandan



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ORDER

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This Criminal Revision is filed to call for the records and set aside the order dated 26.03.2024 made in Crl.M.P.No.2447 of 2023 in S.T.C.No.164 of 2022 on the file of the learned Judicial Magistrate Cum Fast Track Court, Magisterial Level, Pattukottai, Thanjavur and allow the above Criminal Revision Petition.

2. The petitioner is the complainant in S.T.C.No.164 of 2022 on the file of the learned Judicial Magistrate Cum Fast Track Court, Magisterial Level, Pattukottai, Thanjavur.

3. The respondent borrowed a sum of Rs.4,00,000/- from the petitioner. To discharge the said debt, he issued cheque on 12.09.2022 drawn on the Ujjivan Small Finance Limited, Trichy. The petitioner presented the cheque before his Bank and the cheque was returned with an endorsement “stop payment”. Therefore, the petitioner issued the legal notice on 31.01.2013. The respondent received the same on 01.02.2013, but did not send any reply and did not make any payment. In such circumstances, the petitioner filed a complaint under Section 138 Cr.P.C., before the learned Judicial Magistrate Cum Fast Track



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Court Magisterial Level, Pattukottai and the same was taken on file in S.T.C.No. 164 of 2022.

4. After the completion of examination of the witnesses, the petitioner came to know that the cheque number was wrongly mentioned as “757273”. Hence, the petitioner has filed a amend petition before the Court below and the same was dismissed. Challenging the same, the present Revision Case has been filed.

5. The learned counsel for the petitioner submitted that before the trial Court, the Cheque number was mentioned as 757273 instead of 757274 in the complaint and in the proof affidavit. The cheque number was wrongly mentioned by way of typographical error. Therefore, the petitioner filed the above petition, without considering the facts of the case, the learned trial Judge dismissed the above petition. Challenging the same, the present petition has been filed.

6. The learned counsel for the respondent submitted that at the belated stage, the above petition has been filed and in 138 of Negotiable Instrument Act cases, the amendment petition itself is not maintainable more particularly,



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amendment Cheque Number. Hence, the learned trial Judge rightly dismissed the above petition. Therefore, he strongly opposed to allow this petition.

7. The specific case of the petitioner is that the cheque number was wrongly mentioned because of typographical error and the said mistake is inadvertent mistake. According to this Court, the said mistake can be rectified by way of filing amendment petition.

8. To verify the submission of the learned counsel for the petitioner, this Court called for records from the concerned Court below and a perusal of the records shows that the correct cheque No.757274 and in the complaint and in the affidavit it was wrongly mentioned as 757273 and to rectify the above mistake, the petitioner has filed the amendment petition.

9.The Hon'ble Supreme Court has reiterated the principle that the Court has power to allow the amendment petition in 138 of the NI proceedings. The petitioner has come forward with a petition to amend the cheque number with all *bonafides*. Due to the inadvertent mistake committed during the course of preferring the complaint and proof affidavit, the parties can not be allowed to



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suffer. Hence, this Court finds every valid reason to accept the plea of the amendment made by the respondent.

10. Therefore, this Court finds that the order passed by the learned Judicial Magistrate Cum Fast Track Court, Magisterial Level, Pattukottai, Thanjavur in Crl.M.P.No.2447 of 2023 in S.T.C.No. 164 of 2022 is not in accordance with law. Accordingly this Criminal Revision is allowed and the order passed in Crl.M.P.No.2447 of 2023 in S.T.C.No. 164 of 2022 on the file of the learned Judicial Magistrate Cum Fast Track Court, Magisterial Level, Pattukottai, Thanjavur is set aside and the learned Judge is directed to carry out the necessary correction as mentioned in the amendment petition and proceed with the trial. It is open to the respondent to raise any further defence in this regard. Consequently, connected miscellaneous petition is closed.

31.07.2024

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

To
The Judicial Magistrate Cum Fast Track Court,
Magisterial Level,
Pattukottai, Thanjavur



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K.K.RAMAKRISHNAN, J.

tta/sbn

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