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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.11.2024

CORAM

THE HONOURABLE **MR.JUSTICE N.ANAND VENKATESH**

Crl.O.P(MD)No.13965 of 2023
and
Crl.M.P(MD)No.10941 of 2023

1. Valliammal

2. E.Sathishkumar

... Petitioners

Vs

Dineshkumar

... Respondent

PRAYER: Criminal Original petitions have been filed under Sections 439 (1) (b) of the Code of Criminal Procedure, to set aside the order passed by the learned District Munsif cum Judicial Magistrate, Thiruvudaimaruthur in Crl.M.P.No.2567 of 2023 in STC No.31 of 2019, dated 23.06.2023.

For Petitioner : Mr.Narayanakumar.K.P,

For Respondent :Ms.M.Maria Vinola



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ORDER

This criminal original petition has been filed challenging the order passed by the Court below in Cr.M.P.No.2567 of 2023 in S.T.C.No.31 of 2019, dated 23.06.2023, dismissing the application filed by the petitioners (A2 and A3) under Section 91 of Cr.P.C.

2.Heard the learned Counsel appearing on either side.

3.The respondent filed a private complaint against the petitioners for the offence under Section 138 of Negotiable Instruments Act. The case of the respondent is that A3 received a loan of Rs.12 Lakh for the improvement of the partnership business that was conducted by A2 and A3. Towards this liability, a cheque was issued and when this cheque was presented it was dishonored.

4.The complainant was examined as P.W.1 and his mother was examined as P.W.2. The defence that is sought to be projected by the petitioners is that they have no acquittance with the complainant and that a signed blank cheque which was given as a security for a car loan was



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misused. That apart, they have also put forth a defence to the effect that there was no financial capacity for the complainant to have parted a sum of Rs.12 Lakh to the accused persons. In view of the fact that the complainant at the relevant point of time was only a student, who was studying MBA.

5.The case was at the stage of final arguments and at that stage, the petitioners filed an application under Section 91 Cr.P.C seeking direction to the complainant to produce certain documents, namely, the bank statements and the copy of the sale deed in order to substantiate the financial capability of the complainant.

6.The Court below on considering the rival claims came to a conclusion that the petition itself has been filed only to drag on the proceedings and that there are no merits in the petition and accordingly, the same was dismissed.

7.In the considered view of this Court, P.W.1 and P.W.2 have been cross examined on the side of the petitioners and necessary questions have been asked to them. The petitioners based on the same wanted to establish that the complainant did not have the financial capacity to give a loan of Rs.



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12 Lakhs between the year 2012 and 2015. For that purpose, the petitioners have sought for the bank statements of the relevant period and also the copy of the sale deed. If ultimately, the petitioners are able to substantiate before the Court that the complainant did not have the financial capacity and that the complainant was not willing to produce the relevant documents to substantiate the same, the petitioners can always raise the plea of adverse inference under Section 114 (g) of Indian Evidence Act. There is no necessity to force the complainant to produce the documents. This clarity will sufficiently take care of the grievance expressed by the petitioners. The Court while appreciating the evidence, can deal with this issue on adverse inference raised by the petitioners.

8. In the result, this Court does not find any ground to interfere with the order passed by the Court below in CrI.M.P.No.2567 of 2023, dated 23.06.2023. The adverse findings that have been given by the Court below, in this petition, should not have any bearing while the Court below decides the main case and such decision shall be taken only on its own merits and in accordance with law. This Court had already directed the case to be disposed of expeditiously, within a period of three months while disposing of a petition in CrI.O.P(MD)No.20008 of 2023 dated 02.02.2023. That



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period had already lapsed. Considering the fact that the case is now at the stage of final hearing, the Court below is directed to complete the proceedings in S.T.CNo.31 of 2019 within a period two months from the date of receipt of a copy of this order and submit a compliance report.

9.In the result, this Criminal Original Petition disposed of with the above direction. Consequently, the connected miscellaneous petition is closed.

21.11.2024

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

To

1.The District Munsif cum Judicial Magistrate,
Thiruvidaimaruthur.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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N.ANAND VENKATESH, J.

LR

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