



CRL MP(MD) No.9435 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Saturday, the Nineteenth day of October Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.9435 of 2024

in

CRL A(MD)No.273 of 2024

S.SITHUMURUGAN @ CHITHUMURUGAN ... PETITIONER/COMPLAINANT

Vs

K.SYED MOHAMED

... RESPONDENT/ACCUSED

Criminal Miscellaneous Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to permit the petitioner to adduce additional evidence and receive passport no.4088309 dt. 15.09.2015 as petitioner side evidence and mark the same as exhibits in STC No. 19 of 2016 on the file of the learned Judicial Magistrate No.II (Fast track Court)Madurai dated 19.09.2023 in Crl.A(MD)No.273 of 2023 pending before this Hon'ble Court.

PRAYER in CRL A(MD)No.273 of 2024:

To call for the records in S.T.C 19 of 2016 on the file of the Learned Judicial Magistrate No-II(Fast Track Court), Madurai, and set aside the order of vide judgment dated 19.09.2023.

Order : This Criminal Miscellaneous Petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.S.SRIKANTH, Advocate for M/S.APN LAW ASSOCIATES, Advocate for the petitioner and of Mr.V.NAGENDRAN, Advocate on behalf of the Respondent, the Court made the following order:-



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This Criminal Miscellaneous Petition is filed to permit the petitioner to adduce additional evidence and receive Passport No.4088309 dated 15/09/2015 as petitioner's side evidence and mark the same as exhibit in STC No.19 of 2016 on the file of the Judicial Magistrate No.II (Fast Track Court), Maudrai, dated 19/09/2023 in CrI.A(MD)No.273 of 2023 pending before this court.

2.The case of the petitioner is that the accused borrowed more than Rs.5,25,000/- as hand loan for his business, promising to pay the same within 20 days. When the money was demanded back, the accused issued a cheque drawn on ICICI Bank, Ponnamaravathy Branch, Pudukkottai, on 14/10/2015 towards discharge. It was presented for payment on 14/10/2005 before the SBI, Madurai Main Branch. But it was dishonoured with an endorsement 'PAYMENT STOPPED BY DRAWER'. After complying the statutory formalities, the private complaint was filed.

3.The trial Court has taken cognizance for the offence under Sections 138 of Negotiable Instruments Act and issued summons and on summons, the accused appeared before the trial Court. The substance of the allegation was put to the accused. He denied.

4.During trial, on the side of the complainant 5 witnesses were examined and



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11 documents marked. On the side of the accused, no oral and documentary evidence was allowed.

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5. After examination of the witnesses, the accused was examined under Section 313(1) (b) of Cr.P.C., with regard to incriminating circumstances found in the prosecution evidences. The accused denied the evidences.

6. At the conclusion of the trial process, the trial court found the accused not guilty under section 138 of the Negotiable Instruments Act and acquitted him.

7. Against the judgment of acquittal, this criminal appeal is preferred by the complainant as appellant. Pending process, this criminal miscellaneous petition is filed by the petitioner seeking permission of this court to adduce additional evidence.

8. That was resisted by the respondent by filing counter affidavit.

9. Heard both sides.



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10.The specific case of the complainant is that the accused borrowed hand loan of Rs.5,25,000/-, on 25/09/2015.

11.Defence was taken that on the date of the alleged transaction, the complainant was not in India, but in abroad. The learned counsel appearing for the respondent has pointed out this specific portion of the cross examination, wherein, it is stated that in September 2015, he went to Ceylon and stayed there. That was taken into consideration by the trial court stating that there is no possibility for the transaction took place, on 25/09/2015, in India as stated by the complainant now. To show that on 24/09/2015, the complainant was in India, even though he went to Ceylon, in the month of September 2015, he returned to India and he was available.

12.No doubt that no specific question was put to the complainant during the course of the cross examination to the effect that on the particular date of the alleged transaction namely 25/09/2015, the complainant was in not India, but in Ceylon. So, it is the duty of the complainant to explain his date of travel to Ceylon and return to India through re-examination. But it appears that re-examination was not taken to explain the above said fact. So, this was pointed out by me to the learned counsel



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appearing for the petitioner that re-examination cannot be undertaken after a lapse of several years, by way of additional evidence.

13. But however, it is a documentary proof that too a Passport. If at all, that document can be proved only by summoning the petitioner for further chief.

14. Even though, the learned counsel appearing for the respondent would submit that even if the document is received in evidence, the case of the complainant does not improve. The trial court not only taken that point into account, but also the other factors. But I am not entering the issue now. It is for the parties to take the chance at the time of hearing the main appeal.

15. So with the above said observation, this criminal miscellaneous petition stands **allowed**.

sd/-
19/10/2024

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/10/2024
Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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TO
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1 THE JUDICIAL MAGISTRATE NO.II
(FAST TRACK COURT), MADURAI.

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
MADURAI

+1 CC to M/s.V.NAGENDRAN, Advocate (SR-12851[I] dated 21/10/2024)

ORDER
IN
CRL MP(MD) No.9435 of 2024
in
CRL A(MD)No.273 of 2024
Date :19/10/2024

SS/MMS/SAR- /29/10/2024/ 6P/4C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023