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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2025

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No. 365 of 2024
and
Crl.M.P.No.3313 of 2024

R.Amsaveni ... Petitioner

..vs..

P.Lakshmi ... Respondent

Criminal Revision Petition filed under Sections 397 read with 401 Cr.P.C., to call for the records in Crl.M.P.No.452 of 2024 in S.T.C.No.354 of 2022 and set aside the order dated 16.02.2024 in Crl.M.P.No.452 of 2024 passed by the learned Judicial Magistrate No.II, Ponneri, Tiruvallur District.

For Petitioner : Mr.R.Ganesh Kumar
For Respondent : Mr.A.Salomi

ORDER

This Criminal Revision Petition has been filed against the order dated 16.02.2024 passed in Crl.M.P.No.452 of 2024 in S.T.C.No.354 of 2022 by the learned Judicial Magistrate No.II, Ponneri, Tiruvallur District.

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2. According to the petitioner-accused, the respondent-complainant filed a complaint invoking Section 200 Cr.P.C. read with 138 of Negotiable Instruments Act in S.T.C.No.354 of 2022 before the Judicial Magistrate No.II, Ponneri, Tiruvallur District against the petitioner-accused alleging dishonour of cheque No.758450, dated 04.04.2022 for a sum of Rs.3,00,000/-. Thereafter, trial proceedings commenced and the respondent-complainant filed her proof affidavit along with documents before the trial Court. During the cross examination of P.W.1, the petitioner-accused had put forth the defence that she does not have any transaction with the respondent-complainant, and instead, the respondent-complainant had transaction with one Manjula, who is the sister of the accused. In order to establish the said defence, the petitioner-accused filed a petition under Section 254(2) Cr.P.C., to summon one Manjula and three others as defence side witnesses. The learned Magistrate, who dealt with the said case, dismissed the petition on 16.02.2024 by holding that, only to drag on the proceedings, the petitioner has filed the petition. Challenging the said order, the petitioner has filed the present revision petition.

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3. Learned counsel for the petitioner submitted that during the cross examination of P.W.1, the specific defence taken by the petitioner-accused is that the respondent-complainant had transaction with the said Manjula, who is the sister of the petitioner-accused and the petitioner-accused acted as a surety holder and that she executed a promissory note and a cheque in respect of the transaction stated above. Thereafter, the said Manjula repaid the loan amount to the complainant, but the complainant failed to return the promissory note and cheque of the petitioner, and mis-utilised the same for the said liability. In order to substantiate the said defence, the said Manjula has to be examined as a defence witness. He further submitted that similar to the complainant, the accused is also vested with the right under Section 254(2) Cr.P.C., to summon and examine any person in order to establish her defence. Merely because the petitioner-accused had examined herself under Section 315 Cr.P.C., it does not mean that she is not entitled to examine any other witnesses on her side. However, the learned Magistrate failed to consider the object and scope of examination of defence witness, but simply dismissed the petition. He further submitted that after dismissing

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the said petition, the learned Magistrate closed the arguments on the side of the petitioner-accused and posted the case for judgment on 23.02.2024. Therefore, it is apparent from the records that the learned Magistrate had proceeded with the case, without providing sufficient opportunity of hearing to the petitioner to disprove the case against her and hence, the impugned order is liable to be set aside.

4. Learned counsel for the respondent-complainant submitted that in the earlier occasion, the petitioner-accused never took a defence by sending reply to the statutory notice or by filing the complaint that complainant had transaction with Manjula and not with her. However, only during the cross examination, she introduced the said Manjula has a defence witness. He further submitted that after completion of chief and cross examination of complainant's side evidence, the petitioner-accused filed the petition invoking Section 315 Cr.P.C., seeking to examine herself as a defence witness. After completion of examination of defence side witness, when the matter was posted for arguments, at that time, the petitioner-accused taken out an application under Section 254 Cr.P.C.,

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seeking to examine the said Manjula and three others as defence witnesses, which is noting but only to drag on the proceedings. He further submitted that the petitioner-accused cannot introduce the list of witnesses at a later point of time. The learned Magistrate had rightly appreciated the entire materials and also the contention of the complainant and dismissed the petition, which does not warrants any interference by this Court.

5. Heard both sides and perused the materials available on record.

6. On a perusal of the entire materials, it is seen that at the time of cross examination of P.W.1, the petitioner-accused had put a suggestion that the respondent-complainant had transaction with the said Manjula, who is the sister of the petitioner-accused, but not with the petitioner-accused and also the said Manjula had repaid the amount borrowed from the complainant. In order to substantiate the said defence, the said Manjula has to be examined as a defence witness.

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7. When once the defence was taken by the accused for discharging her from the case, the accused has to establish the defence of repayment. To summon and examine any person in order to establish her defence is her legal right. The rejection of the request for the examination of defence witness sought by the petitioner-accused is not justified and for that reason, the order passed by the learned Magistrate is perverse.

8. In view of the above, the revision petition is partly allowed and the impugned order dated 16.02.2024 passed in S.T.C.No.354 of 2022 by the learned Judicial Magistrate No.II, Ponneri, Tiruvallur District, is hereby set aside. Consequently, connected miscellaneous petition is closed.

9. Since the petitioner-accused put suggestion before P.W.1 during the cross examination only in respect of Manjula and not for others, hence, the learned Magistrate is directed to summon the said Manjula and she has to be examined as a defence witness. After completion of

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her evidence, dispose of the case on merits and in accordance with law within a period of two months from the date of receipt of a copy of this order.

21.04.2025

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To
The Judicial Magistrate No.II,
Ponneri, Tiruvallur District.

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P.VELMURUGAN, J.

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