

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

Crl.MC.No. 4520 of 2013 ()

**-----
CRL.M.P.NO.1315/2012 IN ST.NO. 106/2012
OF JUDICIAL FIRST CLASS MAGISTRATE COUIRT - II, KARUNAGAPPALLY
-----**

PETITIONER/COUNTER PETITIONER/ACCUSED :

**-----
SNEHAGAN,
S/O.DIVAKARAN,
CHEMPAKASSERIL,
MARUNOORKULANGARA SOUTH
KARUNAGAPPALLY.**

**BY ADVS.SRI.M.R.SASITH PANICKER
SRI.M.R.SARIN PANICKER
SRI.LATHEESH KUMAR K.J.**

RESPONDENTS/STATE/COMPLAINANT :

**-----
1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031.**

**2. REMANAM,
S/O.RAGHAVAN,
SUBADRA BHAVANATH, MARU-NORTH
ALUMKADAVU, KARUNAGAPALLY - 691 001.**

**R1 BY PUBLIC PROSECUTOR SRI. R. GITHESH
R2 BY ADV. SRI.PHILIP J. VETTICKATTU**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 07-07-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Mn

...2/-

Crl.MC.No. 4520 of 2013 ()

APPENDIX

PETITIONERS' ANNEXURES :

- ANNEXURE A1.** **TRUE COPY OF THE COMPLAINT IN S.T.NO.106/12 ON THE FILES OF THE JFCM COURT II, KARUNAGAPALLY.**
- ANNEXURE A2.** **TRUE COPY OF THE CRL.M.P.NO.1315/2012 IN S.T.NO.106/2012 DATED 16.10.2012.**
- ANNEXURE A3.** **A TRUE COPY OF THE OBJECTION IN S.T.NO.106/2012 DATED 20.10.2012.**
- ANNEXURE A4.** **TRUE COPY OF ORDER IN THE CRL.M.P.NO.1315/2012 IN S.T.NO.106/2012 DATED 10.05.2013.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

Mn

ALEXANDER THOMAS, J.

Crl.M.C.No.4520 Of 2013

Dated this the 7th day of July, 2015.

ORDER

The 2nd respondent had instituted a complaint alleging offences punishable under Sec.138 of the Negotiable Instruments Act against the petitioner-accused. It is now pending as S.T.No.106/2012 on the file of the Judicial First Class Magistrate Court-II, Karunagappally. The order under challenge in this Crl.M.C. filed under Sec.482 of the Cr.PC is one at Anx-A4 rendered on 10.5.2013 in Crl.M.P.No.1315/2012 in S.T.No.106/2012 on the file of the above said court whereby the prayer of the 2nd respondent (complainant) herein was allowed by the court below and the said application filed under Sec.311 of the Cr.P.C was allowed and the court below recalled the order posting the case for judgment so as to dispose the matter on merit after recording evidence. The main contention raised by the petitioner herein is that the court below ought to have held that as per Sec.353(1) Cr.P.C, the trial stands terminated, once the case was posted for judgment and the power under Sec.311 of the Cr.P.C cannot be invoked thereafter in this regard. It is

CrI.M.C.No.4520 Of 2013

in the light of the contention that the petitioner has filed the instant CrI.M.C seeking to quash the impugned Anx-A4 order as aforestated.

2. Heard Sri.M.R.Sasith Panicker, learned counsel for the petitioner (accused) and Sri.Philip J.Vettikkattu, learned counsel for the 2nd respondent (complainant) and the learned Public Prosecutor appearing for the 1st respondent-State of Kerala.

3. It is common ground that the case was posted for judgment and it is on this premise that the petitioner raises a contention that once the case is posted for judgment, then the power under Sec.311 of the Cr.P.C cannot be invoked thereafter, etc. Sec.311 of the Cr.P.C reads as follows:

“Sec.311. Power to summon material witness, or examine person present.—Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

Sec.353(1) dealing with judgment provides as follows:

“Sec.353. Judgment.—(1) The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced in open Court by the presiding officer immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders,—

(a) by delivering the whole of the judgment; or

Crl.M.C.No.4520 Of 2013

- (b) by reading out the whole of the judgment; or
- (c) by reading out the operative part of the judgment and explaining the substance of the judgment in a language which is understood by the accused or his pleader."

The matter in issue is no longer res integra and it is covered against the petitioner and in favour of the 2nd respondent in view of the ratio decidendi of the decision of the Division Bench of this Court in the case Sree Venkatadeswara Enterprises v. Rajasekharan Nair reported in 2006 (3) KLT 930 wherein it was held that trial as provided under Sec.311 will not be terminated by closing the evidence of prosecution and defence or posting the case for judgment and that the trial will stand terminated only on the pronouncement of the judgment either leading to the acquittal of the accused or after awarding sentence after conviction, etc. It has been held by the Division Bench in paragraphs 10, 11 & 15 in Sree Venkatadeswara Enterprises 's case (supra) that Sec.353(1) dealing with judgment provides that every trial in any criminal court of original jurisdiction, the judgment shall be pronounced in open court by the presiding officer immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders. So the termination of trial as provided under sub-section (1) of Sec.353 cannot be understood as providing that trial of a criminal

Crl.M.C.No.4520 Of 2013

courts ends before the judgment is pronounced. Whether it is a sessions trial or a warrant trial or a summons trial, pronouncing of judgment acquitting or convicting the accused forms part of the trial as contemplated under Chapters XVIII, XIX and XX of the Code. That Sec.354 provides the language and contents of the judgment. Sec.354 makes it abundantly clear that sentence also form part of the judgment. Therefore, till the accused is sentenced, judgment is not complete. Till the judgment is pronounced, trial continues. Therefore, it is not possible to restrict the scope of trial provided under Sec.311 of the Code to a stage up to the closing of evidence or hearing of arguments and posting the case for judgment. Even if, after closing evidence for prosecution and defence, prosecution and defence were heard and case is posted for judgment to a specified future date, it cannot be said that before pronouncing judgment the trial is terminated. When Sec.311 provides that the power thereunder could be invoked at any stage of trial, it is not possible to restrict it to the stage of closing of evidence or posting of the case for judgment. The said power under Sec.311 could be exercised till the trial is completed, provided it is essential for a just decision of the case. Sec.391 of the Cr.P.C empowers the appellate court while dealing with any appeal under Chapter XXIX to admit additional

Crl.M.C.No.4520 Of 2013

evidence, if it thinks additional evidence is necessary. It empowers the appellate court to take such evidence itself or direct it to be taken by a subordinate court. On hearing the appeal, if the appellate court finds that to arrive at the truth and take a just decision a particular witness should have been examined or a witness recalled and examined under Sec.311 would definitely enable the appellate court to recall the witness and examine him or summon and examine the witness. If that be the case one cannot say that Sec.311 of the Code cannot be invoked by the trial court at the pre-judgment stage before the judgment is pronounced. That the trial as provided under Sec.311 of the Cr.P.C will not be terminated by closing the evidence of prosecution and defence or posting the case for judgment. The trial would stand terminated only on pronouncing the judgment either acquitting the accused or awarding the sentence after conviction. The Division Bench specifically held in paragraph 15 of Sree Venkatadeswara Enterprises's case (Supra) that the view earlier taken in case as in Sajeendran v. Thalikulathoor Grama Panchayat reported in 2004 (1) KLT 69) and Joseph P.T. V. K.K.Rajappan & Anr reported in 2004 (1) KLJ (NOC) 12 = 2003 (3) KLT SN 137 (C.No.175) stand overruled.

Crl.M.C.No.4520 Of 2013

In this view of the matter, the court below has not committed any fault in passing the impugned order, in the light of the aforestated view taken by the Division Bench in Sree Venkatadeswara Enterprises v. Rajasekharan Nair reported in 2006 (3) KLT 930. Accordingly, there is no merit in the contentions of the petitioner and the Crl.M.C stands dismissed.

ALEXANDER THOMAS,
Judge.

bkn/-