

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP No.10714 of 2015

S.Umamaheswaran

.. Petitioner

Vs

M.S.& Co.,
Rep.by its Power Agent
V.Subramanian
H.39, Periyar Nagar
Erode

.. Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the order dated 19.11.2014 made in Crl.R.C.No.18 of 2014 on the file of the learned II Addl.District Sessions Judge, Erode confirming the order dated 25.04.2014 made in Crl.M.P.No.10285 of 2013 on the file of the learned Judicial Magistrate No.II, Erode and to allow the Crl.M.P.No.10285 of 2013 on the file of the learned Judicial Magistrate No.II, Erode.

For Petitioner :Mr.D.Selva Raju

ORDER

The petitioner has come up with this petition to set aside the order dated 19.11.2014 made in Crl.R.C.No.18 of 2014 on the file of the learned II Additional District and Sessions Judge, Erode, confirming the order dated 25.04.2014 made in Crl.M.P.No.10285 of 2013 on the file of the learned Judicial Magistrate No.II, Erode and to allow the Crl.M.P.No.10285 of 2013 on the file of the learned Judicial Magistrate No.II, Erode.

2. Heard the learned counsel for the petitioner and perused the materials available on record.

3. The accused in the trial court is the petitioner herein.

4. For the sake of convenience, the parties are referred to as complainant and accused. The complainant lodged a complaint for the offence under section 138 of Negotiable Instruments Act and the same was taken on file as C.C.No.354 of 2002 by the trial court. The accused entered appearance and the matter was being hotly contested.

4. While so, during the course of proceedings, the accused seems to have filed an application for a direction to the complainant to produce two pronotes dated 10.11.1995 and 5.10.1996. The complainant resisted the application and the trial court by order dated 10.12.2004 in CrI.M.P.No.4641 of 2004 upheld the objection raised by the complainant by holding that those two pronotes are not relevant for the decision of the case.

5. It is submitted by the learned counsel for the petitioner that the complainant is now seeking to mark those two pronotes as Ex.P.37 and Ex.P.38, aggrieved by which, the accused filed an application before the trial court for expunging and demarking the two documents on the ground that it is admissible under section 164 of the Evidence Act.

6. Section 164 of the Evidence Act reads as follows:
"164. Using, as evidence, of document production of which was refused on notice.

When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the court."

7. The trial court dismissed the application in CrI.M.P.No.10285 of 2013 filed by the accused, on 25.4.2014. In the order dated 25.4.2014, in paragraph No.6, the learned trial Judge has stated as follows:

"6... Accordingly Ex.P.37 to E.P.47 was marked on 23.7.2013 with the objection of the petitioner/accused herein. Among those the petitioner/accused claims Ex.P.37 and Ex.P.38 to be fabricated documents and has filed the present petition to expunge or scrap the evidence."

8. Aggrieved by the order of the trial court, the petitioner approached the Sessions Court in CrI.R.C.No.18/2014, which was also dismissed on 19.11.2014, against which this application under section 482 of Cr.P.C has been filed.

9. Under section 397(3) of Cr.P.C, a party is precluded from approaching the High Court, when once he has exhausted the revisional remedy by approaching the Sessions Court. Though a second revision is not maintainable, in extraordinary circumstances, a petition under section 482 of Cr.P.C is maintainable.

10. Mr.D.Selva Raju, learned counsel for the petitioner submitted that both the courts below grievously erred in permitting

the complainant to mark the two pronotes, in violations of the provision of Section 164 of Evidence Act, which says that the same could be marked with the consent of the opposite party or an order of the Court. There seems to be force in the submission of the learned counsel for the petitioner.

11. The Hon'ble Supreme Court in Bipin Shantilal Panchal vs. State of Gujarat and another reported in AIR 2001 Supreme Court 1158 has stated that when marking of the document is objected to, the trial court should record the objections and at the time of the judgment, should consider the objections and thereafter should pass orders. The trial should not be stopped on that score by the higher courts. The objections recorded and considered by the trial court is subject to reappraisal by the superior courts either in appeal or in revision against the judgment or order of the lower court.

12. The trial court is directed to consider the objections raised by the petitioner with respect to marking of Ex.P.37 and Ex.P.38 in the light of Section 164 of the Evidence Act and give a finding in the judgment in C.C.No.354 of 2002.

13. With the above direction, this Criminal Original Petition is closed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ajr

To

1. II Addl.District Sessions Judge,
Erode.

2.-DO- Thro Principal District Judge, Erode.

3. The Judicial Magistrate No.II, Erode.

4. -do- Thro The Chief Judicial Magistrate, Erode.

1 cc to Mr.D.Selvaraju ,Advocate, SR.No.23650

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VD(CO)

PMK.19.5.2015