

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.07.2015

Delivered on : 16.07.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.O.P.No.17213 of 2015
and M.P.No.1 of 2015

M.Pandiyan

... Petitioner/Accused

Versus

G.Sunitha

.. Respondent/Complainant

Criminal Original petition filed under Section 482 of the Criminal Procedure Code praying to set aside the order passed in Crl.MP.No.4648 of 2014 in CC.No.23 of 2011 dated 01.06.2015 by the Judicial Magistrate, Arakonam.

For Petitioner : Mr.V.Vijayakumar

O R D E R

This petition has been filed to set aside the order in Crl.MP.No.4648 of 2014 in CC.No.23 of 2011 dated 01.06.2015 passed by the learned Judicial Magistrate, Arakonam.

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

3. For the sake of convenience, the parties will be refer to by their name. It is the case of Sunitha [Complainant] that Pandiyan [Accused] had borrowed Rs.2Crores from her as handloan and had issued a cheque dated 09.09.2010 for the said loan, which when presented was dishonoured for insufficiency of funds. Sunitha issued a statutory notice dated 23.09.2010 under Section 138 of Negotiable Instruments Act and since Pandiyan did not pay the amout, she lodged a prosecution in CC.No.23 of 2011 before the learned Judicial Magistrate, Arakonam.

4. Sunitha was examined in-chief as PW1 before the Trial Court and she was cross-examined by Pandiyan. Thereafter, Pandiyan was also examined by the Court under Section 313 Cr.P.C. Pandiyan filed an application under Section 311 Cr.P.C to recall Sunitha for cross-examination, which was allowed by the Trial Court. Despite which, after giving several adjournments, Pandiyan did not choose

to cross-examine Sunitha. Thus, Pandiyan has prolonged the case from 2011 to 2015 without even cross-examining Sunitha.

5. Thereafter, Pandiyan filed an application in CrI.MP.No.4648 of 2014 in CC.No.23 of 2011 for sending the impugned cheque to the Forensic Department to compare the handwriting and give a report. It is Pandiyan's contention in this petition that he had only signed the cheque, but he had not filled the other columns. This petition was resisted by Sunitha on the ground that Pandiyan had not taken this defense earlier, when the notice under Section 138 of Negotiable Instruments Act was issued and suddenly, he has come up with this plea, only with an intention of protracting the trial.

6. The Trial Court considered the rival submission and dismissed CrI.MP.No.4648 of 2014 filed by Pandiyan on 01.06.2015, challenging which, Pandiyan is before this Court.

7. Mr.Vijayakumar, learned counsel appearing for Pandiyan submitted that the columns in cheque were not written by Pandiyan and that he had only given blank signed cheque, which was misused by Sunitha and her husband.

8. It is not Pandiyan's case that his signature in the cheque has been forged. It is his contention that he gave blank cheque which was later filled up by the complainant. It is true that a fair opportunity should be given to the accused to defend himself in a prosecution under Section 138 of Negotiable Instruments Act, especially, in the light of the presumption under Section 139.

9. In this case, Pandiyan did not even choose to reply to the Statutory Notice under Section 138 of Negotiable Instruments Act; Sunitha was examined as PW1 and she was not cross-examined by him; when he was examined by the Court under Section 313 Cr.P.C, he did not set up this defense either; and lastly when the Court allowed his application under Section 311 Cr.P.C to recall Sunitha-PW1, he did not choose to cross-examine her for several years. Therefore, it is patent that this application is only a ruse to protract the trial and tire out the complainant.

10. In the result, this petition is devoid of merits and stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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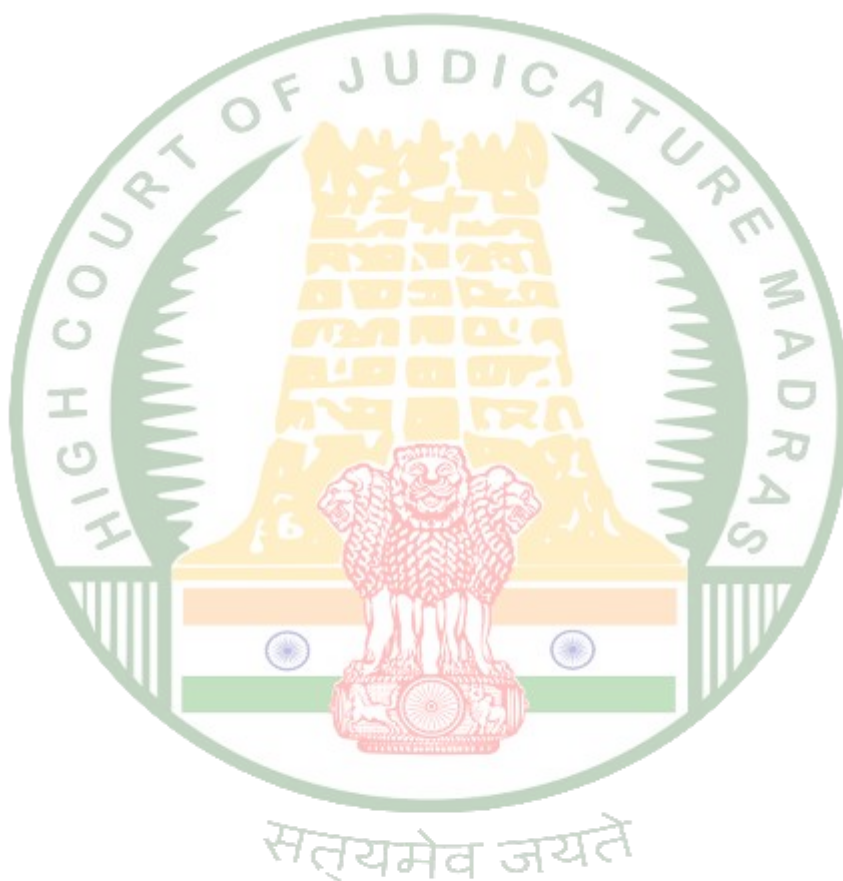
Sub Assistant Registrar

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To
The Judicial Magistrate,
Arakonam.

CRL.O.P.No.17213 of 2015

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