

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-04-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 325 of 2015
and M.P.No. 1 of 2015

A.Subramanian

.. Petitioner

Versus

P.Kannammal

... Respondent

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the order dated 05.03.2015 made in C.M.P.No. 10684 of 2014 in S.T.C.No.331 of 2013 on the file of the Judicial Magistrate, Fast Track Court-II, Erode.

For Petitioner : Mr.M.Guruprasad

ORDER

By consent, the Criminal Revision Case is taken up for final disposal at the stage of admission itself.

2. The petitioner, who is the accused, has filed the above Criminal Revision Case against the order dated 05.03.2015 made in C.M.P.No.10684 of 2014 in S.T.C.No.331 of 2013 on the file of the Judicial Magistrate, Fast Track Court No.II, Erode, dismissing the petition filed by the accused under Section 154 of the Indian Evidence Act, 1872, seeking permission to cross-examine D.Ws. 1 and 2, treating them as hostile witnesses.

3. The petitioner/accused borrowed a sum of Rs.5,00,000/- from the respondent/complainant on 22.12.2012 promising to repay the said amount with interest at the rate of 18% per annum. On the very same day, in order to discharge the said liability, the petitioner had issued a post-dated cheque in favour of the complainant. Subsequently, when the cheque was presented for collection, the cheque was returned and dishonoured with an endorsement "Account Closed". On 22.02.2013, the respondent/complainant issued a statutory notice to the accused demanding the petitioner/accused to pay the amount with interest within 15 days from the date of receipt of the notice. Though, the petitioner/accused received the notice on 28.02.2013, he has not discharged the debt and hence, the complaint. Pending trial, the petitioner/accused filed petition under Section 154 of the Indian Evidence Act, 1872, seeking permission to cross-examine D.Ws. 1 and 2, treating them as hostile witnesses. The Trial Court on finding that there is no material to show that the witnesses

exhibit an element of hostility or the witnesses have resiled from the material statement already made by them or they have satisfied the Court that the witnesses are not speaking the truth, has ultimately dismissed the petition. Aggrieved against the same, the present Criminal Revision Case is filed.

4. Mr.M.Guruprasad, learned counsel for the petitioner/accused would submit that the petitioner/accused filed petition under Section 154 of the Indian Evidence Act, 1872, seeking permission to cross-examine D.Ws. 1 and 2, treating them as hostile witnesses, because, the defence witnesses have totally denied the very transaction by stating that they does not know anything about the present transaction, but, unfortunately, the said petition was dismissed by the Trial Court. He would further add that unless, the petitioner/accused is permitted to cross-examine D.Ws.1 and 2 treating them as hostile witnesses, the petitioner/accused will be put to irreparable loss and injury.

5. At this juncture, it is worthwhile to refer to Section 154 of the Indian Evidence Act, which states that, "Before declaring a witness hostile there must be reliable material showing that the witness has resiled from his earlier statement and has changed sides by shifting his loyalty to opposite". On a careful reading of the evidence, it is seen that the two defence witnesses viz., K.Sudhakar and T.Ravikumar, have clearly stated that they knew about the transaction between the complainant's son and the accused, but, they have only stated that they do not know anything about the present transaction. Thus, it is clear that there is no reliable material evidence produced by the petitioner/accused before this Court to show that the alleged witnesses have resiled from their earlier statement and therefore, the alleged witnesses cannot be treated as hostile witnesses and therefore, in my considered opinion, the petition has been filed only to prolong the proceedings and the Trial Court is right in dismissing the petition seeking permission to cross-examine D.Ws. 1 and 2, treating them as hostile witnesses. This Court does not find any reason to interfere with the reasoned order passed by the Trial Court. Accordingly, this Criminal Revision Case is dismissed confirming the order dated 05.03.2015 passed by the learned Judicial Magistrate, Fast Track Court-II, Erode, in C.M.P.No. 10684 of 2014. It is needless to mention that it is always open to the petitioner/accused to put forth all the grounds raised herein before the Trial Court at the time of hearing the case.

Sd/-

Assistant Registrar

//True Copy//

To

1.The Judicial Magistrate
(FTC II) Erode.

1 cc to Mr. M.Guruuprasad,Advocate, SR.No.21477

Cr1.R.C. No. 325 of 2015

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