

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.10.2015

DELIVERED ON : 16.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.24007 of 2015

and M.P.No.1 of 2015

V.S.Shanmugam

.. Petitioner

Vs

G.S.Sivanantham

.. Respondent

Prayer:- Criminal Original Petitions filed under Section 482 Cr.P.C. to set aside the order of the learned Judicial Magistrate No.I, Gobichettipalayam made in Crl.M.P.No.3444 of 2015 in C.C.No.201 of 2009 and allow Crl.M.P.No.3444 of 2015.

For Petitioner : Mr.R.N.Amarnath

O R D E R

This petition has been filed to set aside the order of the learned Judicial Magistrate No.I, Gobichettipalayam made in Crl.M.P.No.3444 of 2015 in C.C.No.201 of 2009 and allow Crl.M.P.No.3444 of 2015.

2. Heard the learned counsel for the petitioner.

3. For the sake of convenience, the parties will be referred to as complainant and accused.

4. It is the case of the complainant that the accused borrowed a sum of Rs.1,50,000/- on 15.01.2009 and gave a post-dated cheque dated 15.02.2009 for Rs.1,500,000/-, which when presented was returned for "Insufficiency of funds". The complainant issued statutory notice dated 16.06.2009 under Section 138 of the Negotiable Instruments Act to the accused, despite which the accused did not pay the amount and therefore, the complainant launched prosecution in C.C.No.201 of 2009, which is now pending on the file of the learned Judicial Magistrate-I, Gobichettipalayam.

5. It is the specific case of the complainant that the statutory notice dated 16.06.2009 was not received by the accused and it was returned to the complainant's counsel on 21.06.2009. After the completion of prosecution evidence, the accused was questioned under Section 313 Cr.P.C. and

thereafter, he examined one Mr.A.Viswanathan, Head Postmaster, Gobichettipalayam Head Post Office as D.W.1. The petitioner wanted to establish that the statutory notice could not have been returned on 21.06.2009, as it was a Sunday. Not content with the examination of the Postmaster, the accused filed an application in CrI.M.P.No.3444 of 2015 in C.C.No.201 of 2009 under Section 311 Cr.P.C., to summon the postman who was on duty on 21.06.2009. The trial Court after hearing the complainant and the accused, dismissed CrI.M.P.No.3444 of 2015 on 01.09.2015 by a well considered order, challenging which the accused is before this Court.

6. Learned counsel for the accused submitted that the examination of the Postman is very essential for the just decision of the case. This Court is unable to countenance his arguments, inasmuch as the returned cover with the postal endorsement has been marked as Ex.P4. The Postmaster was also examined on behalf of the accused as D.W.1. That apart, in the petition filed by the accused under Section 311 Cr.P.C., he has not given any reasons as to the relevancy of the evidence of the Postman. Further, the prosecution was launched in the year 2009 and the accused has managed to prolong the case upto 2015 and only in order to tire out the complainant, a petition with vague averments has been filed under Section 311 Cr.P.C., which was rightly dismissed by the Court below. This Court does not find any infirmity in the order of the trial Court.

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

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ASSISTANT REGISTRAR (CS-II)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

gms

To

1. The Judicial Magistrate No.I, Gobichettipalayam.
2. The Public Prosecutor , High Court, Madras.

+1 CC to MR.R.N.Amarnath Advocate. SR.NO. 57710

Pre-delivery order in
CrI.O.P.No.24007 of 2015

CO-AP

JD 29/10/2015

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