

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 9-10-2015

CORAM:

THE HON'BLE MR. JUSTICE P.N.PRAKASH

Criminal Original Petition No.24779 of 2015
M.P.No.1 of 2015

1. M/s.CRR Leathers,
rep.by its Partners
2. N.Ramesh Reddy,
Partner, M/s.CRR Leathers
3. N.Rajendra Reddy ... Petitioners

Vs.

M/s.Chamundi & Co.,
rep.by its Manager,
Power of Attorney Agent S.Ganesan,
No.3, Kanniamman Street,
Nagalkeni, Chromepet,
Chennai - 600 044. ... Respondent

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure with a prayer to set aside the order passed by the learned II Fast Track Metropolitan Magistrate, Egmore, Chennai in CrI.M.P.No.1391 of 2015 dated 4.9.2015 in C.C.No.2701 of 2010.

For Petitioner : Mr.C.Subramanian
for M/s.Arulselvam Associates

Reserved on	Pronounced on
6-10-2015	9-10-2015

ORDER

For the sake of convenience, the parties will be referred to as 'the Complainant' and 'the accused'.

2. It is the case of the Complainant that for the goods sold and delivered to the accused on various dates, the accused are due and liable to pay a sum of Rs.8,23,525/-. In discharge of the debt, the accused gave two cheques dated 30.6.2009 and 31.7.2009 for

Rs.3,00,000/- and Rs.4,66,650/- respectively, which when presented were dishonoured for insufficiency of funds. The complainant issued a notice dated 7.1.2010 to the accused and since the accused did not comply with the demand, the Complainant initiated prosecution in C.C.No.2701 of 2010 under Section 138 of Negotiable Instruments Act, 1881 before the XIV Metropolitan Magistrate, Egmore, Chennai, and the case is now pending before the II Fast Track Metropolitan Magistrate, Egmore, Chennai.

3. The trial commenced in the case with the examination of PW-1 on 14.12.2012. During cross-examination of PW-1, the accused demanded production of certain records, which were duly produced by PW-1 on 26.12.2014 itself. Thereafter the accused filed an application in CrI.M.P.No.1391 of 2015 on 26.6.2015, wherein in paragraph 4 it is stated as follows:

"The petitioners/accused submits that as per the order of this Hon'ble Court the respondent/complainant had produced the ledger book of the complainant's Company but before cross examining the respondent/complainant this Hon'ble Court was posted the case for arguments on 25.6.2015. The petitioner/accused further submits that on 25.6.2015 the petitioner counsel who is looking after this case was not well and hence could not appear before this Hon'ble Court and to argue the case. Subsequently this Hon'ble Court was closed the arguments of respondent/complainant and the above said case is posted for judgment on 2.7.2015."

The trial Court by the order impugned, dismissed the petition, challenging which the accused are before this Court.

4. The trial Court while dismissing the petition has stated as follows:

"Heard and orders pronounced. In the result, this petition is dismissed as the petitioner/accused has availed so many chances to cross examine the PW1 and the PW1 has been cross examined by the petitioner/accused elaborately. As the petitioner/accused has cross examined the PW1 on 14.12.11; 28.12.11; 17.7.13; 17.12.13 elaborately this petition is dismissed."

5. This Court does not find any infirmity in the order passed by the trial Court warranting interference. It may be relevant to extract proviso (b) to sub-section (2) of Section 309 of Cr.P.C., which reads thus,

"(b) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment"

The accused wants to further cross-examine PW-1, though PW-1 was extensively cross examined on 14.12.2011; 28.12.2011; 17.7.2013 and 17.12.2013. Therefore, the present petition to recall PW-1 is only to protract the trial, as rightly held by the trial Court.

6. This petition is devoid of merits and consequently this petition is dismissed. Connected miscellaneous petition is also dismissed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vr

To

1. The II Fast Track Metropolitan Magistrate, Egmore, Chennai.

Crl.O.P.No.24779 of 2015

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