

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2015

CORAM

The Hon'ble Mr. Justice R.S.Ramanathan

CrI.O.P.No.7906 of 2015

and

M.P.No.1 of 2015

M/s.Maheswar Traders

rep. by its Proprietor, Mr.M.Mahesh ...Petitioner/Complainant

vs.

B.S.Kalayappagol

Proprietor, Shri Ram Traders

Near Kari Chowk, Bijapur - 586 101. ...Respondent/Accused

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to set aside the order, dated 16.03.2015, in C.M.P.No.1212/2015, in C.C.No.127 of 2011, on the file of the learned Additional District Munsif Cum Judicial Magistrate, Ambur, and to direct the learned Judge to permit the petitioner to examine the Commission Agents Nagaraj and Gajendiran as witness and to mark documents.

For Petitioner : Mr.N.P.Kumar

O R D E R

The petitioner is the complainant in C.C.No.127 of 2011, on the file of the Additional District Munsif Cum Judicial Magistrate, Ambur. He filed the said case against the respondent herein under Section 138 of the Negotiable Instruments Act and after examining his (petitioner's) witnesses, the respondent/accused examined himself as D.W.1, and during his examination, he has stated that the transaction was known to the Commission Agents, by naming them, but, he has not chosen to examine them. Therefore, the petitioner/complainant filed a Petition under Section 311 Cr.P.C., viz., C.M.P.No.1212/2015, for issuing summons to one Nagaraj and Gajendiran, who are Commission Agents, spoken to, by the D.W.1. to be examined on his side. As the said Petition was dismissed by the learned Additional District Munsif Cum Judicial Magistrate, Ambur, by order, dated 16.03.2015, the present Petition is filed to set aside the said order.

2. It is submitted by the learned counsel appearing for the petitioner that, though the respondent failed to rebut presumption drawn against him as per the Negotiable Instruments Act, and having regard to the fact that he has deposed evidence that the transaction was known to Commission Agents and named them, and in order to prove the case of the petitioner/complainant, the petitioner wants to summon those persons and that was not properly appreciated by the Trial Court.

3. I am unable to accept the contentions of the learned counsel for the petitioner. It is seen from the records that the respondent/accused denied his liability, but admitted the issuance of cheque, therefore, the respondent has to rebut presumption drawn against him as per the provisions of Section 118 of Negotiable Instruments Act and when he failed to rebut presumption by not examining the witnesses, there is no need to examine any witness by the petitioner/complainant. Further, the case was posted for judgment, and at the point of time, the petitioner/complainant has filed the Petition, viz., C.M.P.No.1212/2015, for issuing summons to the aforementioned Commission Agents to examine them as witnesses. Hence, the Trial Court has rightly dismissed the C.M.P.No.1212/2015, and I do not find any reason to interfere with the same.

4. In the result, the Criminal Original Petition is dismissed. Consequently, connected M.P. is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sd

To

The Additional District Munsif Cum Judicial Magistrate, Ambur.

1 cc to Mr.N.P.Kumar ,Advocate, SR.No.17408/15

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pmk.30.3.2015