

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 4-9-2015

Pronounced on : 8-9-2015

CORAM:

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

Criminal Original Petition No.14680 of 2010
M.P.Nos.1 and 2 of 2010

Shanmugam

... Petitioner/Petitioner/
Petitioner/Accused

Vs.

A. Vembusekaran

... Respondent/Respondent/
Respondent/Complainant

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure with a prayer to call for the records pertaining to the order dated 13.8.2009 made in C.R.P.No.38 of 2009 on the file of the Additional District and Sessions Judge, Fast Track Court No.1, Salem, by confirming the order passed in C.M.P.No.964 of 2009 in S.T.C.No.516 of 2005 dated 1.6.2009 on the file of the Judicial Magistrate No.6, Salem, set aside the same by allowing this Criminal Original Petition.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondent : Mr.K.V.Sridharan

सत्यमेव जयते
O R D E R

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 the Accused borrowed a sum of Rs.12 lakhs on 21.2.2005 and the accused issued a cheque dated 10.6.2005 for Rs.12 lakhs, which when presented, was dishonoured for the reason 'account closed'. The Complainant issued

statutory notice to the Accused and since the accused failed to repay the amount, filed a complaint in STC No.516 of 2005 before the Judicial Magistrate No.VI, Salem, against the accused under section 138 of Negotiable Instruments Act.

3. The Complainant was examined in chief as PW-1 on 9.6.2008. He was not cross-examined by the Accused. The Accused filed an application under Section 311 Cr.P.C. for recalling PW.1, which was allowed and PW-1 was exhaustively cross-examined by the Accused on 25.8.2008. Not satisfied with that, the Accused filed another application under Section 311 of Cr.P.C. for cross-examining the Complainant, which was also allowed and the Complainant was again cross-examined on 13.4.2009. Thereafter the Accused filed an application in Cr.M.P.No.964 of 2005 in STC No.516 of 2005 under Section 311, to once again cross-examine PW-1 on the ground that he had omitted to ask certain questions.

4. The trial Court, after hearing both sides, by a detailed order dated 1.6.2009 dismissed the petition filed by the Accused. Aggrieved by that the Accused approached the Sessions Court by invoking its revisional jurisdiction in Cr.R.P.No.38 of 2009 against the order passed by the trial Court. The Sessions Judge, by a well considered order, dismissed Cr.R.P.No.38 of 2009 on 13.10.2009, aggrieved by which the Accused has preferred this petition under section 482 of Cr.P.C. in 2010 and obtained an order of interim stay.

5. Heard the learned counsel for the petitioner/Accused as well as the learned counsel for the respondent/Complainant.

6. The learned counsel for the Accused submitted that if one opportunity is given to the Accused to cross-examine PW-1 that would suffice.

7. At the outset, this Court holds that the present petition filed under Section 482 Cr.P.C. itself is an abuse of process of law, inasmuch as the Accused approached the Sessions Court under Section 397 of Cr.P.C. and after having lost before the Sessions Court, he cannot maintain a second revision in the garb of a petition under Section 482 of Cr.P.C., unless there has been a gross miscarriage of justice.

8. It is apparent that from 2006 to 2009 the Accused has cross-examined PW-1 by filing two petitions under Section 311 of Cr.P.C. Therefore, the third petition, which does not even disclose any reason for recalling PW-1, was rightly dismissed by both the Courts

below. This is the sheer abuse of process of law, adopted by the Accused to delay and vex the trial.

9. In the result, this petition is devoid of merits and consequently the same is dismissed. The Trial Court is directed to proceed with the trial in STC No.516 of 2005 expeditiously and complete the trial within a period of three months. The trial Court is further directed to obtain a bond for Rs.10,000/- with two sureties from the Accused under Section 88 of Cr.P.C. and if he fails to appear, NBW be issued to secure his presence. Connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vr

To

- 1.The Additional District and Sessions Judge,
Fast Track Court No.I, Salem.
- 2.The Judicial Magistrate No.6,
Salem.

+1cc to Mr.R.Marudhachalamurthy, Advocate, S.R.No.49014
+1cc to Mr.K.V.Sridharan, Advocate, S.R.No.49020

Cr1.O.P.No.14680 of 2010

BVR(CO)
CA(24/09/2015)

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