

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.03.2015

CORAM

THE HONOURABLE MR.JUSTICE R.KARUPPIAH

Crl.O.P. No.26808 of 2009

L.Ilayaraja

...Petitioner/Accused

-vs-

S.J.Sakthivadivel

...Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C. to set aside the order dated 23.10.2009 passed in Crl.M.P. No.6343 of 2009 in C.C. No.88/2008 on the file of the Judicial Magistrate Court No.I, Erode District.

For Petitioner : Mrs.Komalavalli for
Mr.I.C.Vasudevan

For respondent : No appearance

O R D E R

This petition has been filed by the petitioner to set aside the order dated 23.10.2009 passed by the Judicial Magistrate No.I, Erode District in Crl.M.P. No.6343 of 2009 in C.C. No.88/2008.

2.Admittedly, the respondent herein filed a complaint against the petitioner for the alleged offence under Section 138 of Negotiable Instruments Act and the same is pending before the Judicial Magistrate No.I, Erode as C.C. No.88 of 2008.

3.It is further revealed that in the above said case, after completion of oral evidence, the case was posted for arguments. At that time, the respondent herein filed a petition in C.M.P. No.6343 of 2009 under Section 311 of Cr.P.C. to recall PW1 for marking some documents to prove his case.

4.The petitioner herein objected the above said petition, filed by the respondent, by contending that the respondent has not given the details of the documents sought for marking through PW1 and also objected on the ground that after completion of oral evidence, the petitioner herein attempted to fill up the lacuna in his case.

5.The Trial Court has considered both side submissions and finally came to the conclusion that even though the respondent herein has not given the details of the document sought for marking through PW1, since the main case is pending, permitted the respondent to recall PW1, as prayed for in the above said petition.

6.Aggrieved by the above said order passed by the Trial Court, the petitioner herein preferred this Criminal Original petition and prayed for to set aside the above said order passed by the Judicial Magistrate No.I, Erode District.

7.Heard the learned counsel for the petitioner and perused the materials available on record.

8.It is not in dispute that the respondent has filed a private complaint against the petitioner for the alleged offence under Section 138 of Negotiable Instruments Act and it is pending before the Magistrate Court. Both side admitted that after completion of the oral evidence, the above said case was posted for arguments. At that time, the respondent herein filed the petition in Cr.M.P. No.6343 of 2009 for recall PW1 to mark some documents. As rightly pointed out by the learned counsel for the petitioner herein in the above said petition, the respondent has not stated the details of documents sought for marking through PW1.

9.It is also revealed that the respondent herein has not furnished the above said copy of documents to the petitioner herein. Therefore it is clear that the respondent herein filed a petition for re-call PW1 to mark some documents, without giving any details of the above said documents. The Judicial Magistrate has not considered the contention of the petitioner herein that without details of documents sought for marking through PW1, the petition is not maintainable. Further the respondent herein has not stated any reason why the above said documents have not been marked at the time of examination of PW1. In the petition, it is not stated as the above said documents are traced out only after completion of oral evidence. Therefore, the respondent herein has not given any acceptable reason to recall PW1 and also without furnishing any detail of the documents sought for marking.

10.In the above said circumstances, the order passed by the Judicial Magistrate No.I, Erode is perverse and also illegal, as rightly pointed out by the learned counsel for the petitioner. Therefore, the petition in Cr.M.P. No.6343 of 2009 in C.C. No.88 of 2008, filed by the respondent before the Judicial Magistrate No.I, Erode District is liable to be set aside.

11.In the result, the order dated 23.10.2009 passed in Cr1.M.P. No.6343 of 2009 in C.C. No.88 of 2008 on the file of the Judicial Magistrate Court No.I, Erode District is set aside and the Cr1.O.P. is allowed. Consequently, connected M.P. is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

vga

To

1. Judicial Magistrate Court No.I,
Erode District
2. - Do- Through The Chief Judicial Magistrate,
Erode.

1 CC to Mr.I.C.Vasudevan, Advocate SR.No. 13193

सत्यमेव जयते

Cr1.O.P. No.26808 of 2009

RJ (CO)
PSI (01.04.2015)

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