



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.11.2015

CORAM:

THE HONOURABLE Mr.JUSTICE S.VAIDYANATHAN

CRL.O.P.(MD).Nos.21276 and 21277 of 2015

In both petitions:

V.Sivaraman : Petitioner/Sole Accused

Vs.

S.Manoharan :Respondent/Complainant

PRAYER: Petition is filed under Section 482 of the Criminal Procedure Code praying to call for the records relating to the Docket Orders dated 16.04.2015 and 19.08.2014 in S.T.C.No.566 of 2013 on the file of Judicial Magistrate No.II, Trichy and set aside the same and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.AN.Ramanathan
For Respondents : Mr.A.P.Balasubramani
Government Advocate (Criminal Side)

ORDER

The petitioner has come forward with these petitions under Section 482 of Code of Criminal Procedure, seeking to set aside the Docket Orders dated 16.04.2015 and 19.08.2014 in S.T.C.No.566 of 2013 on the file of Judicial Magistrate No.II, Trichy.

2. Heard the submissions made by the learned counsel appearing on either side.

3. The learned counsel for the petitioner would submit that the respondent herein has filed S.T.C.No.566 of 2013 on the file of Judicial Magistrate No.2, Trichy, under Section 138 of Negotiable Instruments Act r/w Section 200 Cr.P.C. He would further submit that when the above S.T.C was pending, the petitioner had debts with number of persons and the petitioner was constrained to file Insolvency Petition in I.P.No.25 of 2014 on the file of II Additional Sub Judge, Trichirappalli, to declare the petitioner as insolvent.

4. The learned counsel for the petitioner would further submit that since S.T.C No.566 of 2013 was posted for hearing on 19.08.2014, the petitioner could not appear before the II Additional Sub Judge, Trichirappalli on that day and a petition to condone the absence was



filed before the court. On perusing the said petition, on 19.08.2014 the court has passed the following order:

"Complainant present. Accused absent. Petition filed and allowed subject to payment of costs of Rs.1000/- payable to complainant as the accused assured settlement and failed to appear or cross examination of P.W.1 since 13.03.2014. Call on 03.09.2014".

5. The learned counsel would also submit that the case was adjourned to various dates and on 16.04.2015, the court has passed the following order:

"Complainant present. Accused absent petition filed. The learned counsel for complainant submitted that the accused without paying costs. Transfer Original Petition and dragging on the case. Counsel for accused prayed to pass over the case. Counsel for complainant complained that accused side pass over the case and do not appear throughout till closing time of court. Anyhow case passed over at 11Aa.m till 5.p.m no representation for accused. Conduct of accused regretted. In the guise of Transfer Original Petition without any stay the case is being dragged on since 03.09.2014. Already cost of Rs.1000/- not paid. This Court impose another cost of Rs.1000/-. Total Rs.2000 shall be paid by accused. Call on 29.04.2015."

6. The learned counsel for the petitioner submitted that the trial court ought not to have imposed costs for non appearance of the petitioner in the proceedings when the petition to condone his absence was filed by his counsel and further, the trial court ought to have considered the pendency of the Insolvency Petition and he prays that the docket orders of the trial court imposing costs may be set aside.

7. This Court considered the submission of both sides and perused the materials on record.

8. The Insolvency Petition is pending before the court and the court has not declared the petitioner as an insolvent. Therefore, the Court has considered the situation rightly and passed the orders imposing the cost of Rs.1,000/- on 19.08.2014 and thereafter the cost of Rs.1,000/- on 16.04.2015. The petitioner has not taken any steps to pay the costs. As per the typed set of papers, it is seen that the last date of hearing was on 22.09.2015 and this Court is not aware the subsequent events. In any event, the docket order dated 19.08.2014 imposing the cost of Rs.1,000/- and another docket order dated 16.04.2015 imposing Rs.1,000/- cannot said to be unreasonable.

9. In view of the above, this Court is not inclined to grant the relief as sought for by the petitioner. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected M.P. is closed.

Sd/-

Assistant Registrar (Per.Admn)



To

1.The Judicial Magistrate No.II,
Trichy

2.The II Additional Sub Judge,
Trichirappalli.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr.AN.Ramanathan Advocate Sr.No.55391

GJM/JGB/DP/23.11.2015-3P-5C

Order made in
CRL.O.P. (MD) .Nos.21276 and 21277 of 2015
Dated:-05.11.2015