



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.O.P. (MD) No.15597 of 2013

and

M.P. (MD) No.1 of 2013

Mohammed Jaffer

... Petitioner

vs.

V.S.N.Kamal

... Respondent

PRAYER: This petition is filed under Section 482 Cr.P.C., to call for the records in S.T.C.No.2171 of 2005, on the file of the learned Judicial Magistrate No.I, Thoothukudi and set aside the order, dated 05.12.2012, passed in Cr.M.P.No.6484 of 2011.

For Petitioner : Mr.K.Vinayagam

For Respondent : No appearance

ORDER

The petitioner has filed this criminal original petition, under Section 482 Cr.P.C., seeking set aside of the Order, dated 05.12.2012, whereby and whereunder the learned Judicial Magistrate No.I, Thoothukudi, has allowed the criminal miscellaneous petition, in Cr.M.P.No.6484 of 2011 in S.T.C.No.2171 of 2005, filed by the respondent herein, under Section 311 Cr.P.C., seeking permission to examine some more subscribers, namely, A.Santhanam and A.Shajagan, as additional witnesses.

2. For the sake of convenience, the petitioner and the respondent herein are referred to as "the accused" and "the complainant" respectively in this Order.

3. It is the case of the complainant that the accused owes money and in discharge of which liability the accused gave a cheque, which got dishonoured. The complainant issued a statutory notice and since the accused did not make payment he laid prosecution, in S.T.C.No.2171 of 2005, under Section 138 of Negotiable Instruments Act, against the accused, before the learned Judicial Magistrate No.I, Thoothukudi. During the course of trial, the parties were examined and after hearing arguments of both sides, when Judgment was to be pronounced, the complainant filed a criminal miscellaneous petition, in Cr.M.P.No.6484 of 2011, under Section 311 Cr.P.C., seeking permission to examine the additional witnesses, which was allowed by the Trial Court on 05.12.2012. Challenging the same, the accused has filed this criminal original petition to set aside the order, dated 05.12.2012.



4. Heard the learned counsel appearing for the accused. No representation for the petitioner either in person or through his counsel.

5. The learned counsel appearing for the accused has submitted that after the evidence and arguments were completed, it is not open for the complainant to file any application in order to fill up the lacuna. Furthermore, the trial is pending from 2005 and therefore only to prolong the trial, the complainant filed the petition under Section 311 Cr.P.C.

6. On reading of the impugned Order, dated 05.12.2012, this Court does not find any serious infirmity therein and it is a settled legal position that application, under Section 311 Cr.P.C., can be filed at any time before Judgment is delivered.

7. In the result, this criminal original petition is devoid of merits and it is dismissed. The Order, dated 05.12.2012, passed in Cr.M.P.No.6484 of 2011 in S.T.C.No.2171 of 2005, by the learned Judicial Magistrate No.I, Thoothukudi, is confirmed. However, since the trial in S.T.C.No.2171 of 2005 is pending from 2005, the learned Judicial Magistrate No.I, Thoothukudi, is directed to give an opportunity to the parties herein to examine and cross-examine the additional witnesses, namely, A.Santhanam and A.Shajagan, within a period of one month from the date of receipt of a copy of this Order and complete the trial within a period of two months thereafter. It is needless to state that the parties should examine and cross-examine the additional witnesses without taking unnecessary adjournments. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar (C.O.Dept)

/True Copy/

Sub Assistant Registrar

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To
The Judicial Magistrate No.I,
Thoothukudi.
+One CC to Mr.Antony.S.Prabahar, Advocate in Sr.No.13858.

CN/JGB-DP/23.03.2016/2P-3C

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and

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