

HON'BLE SRI JUSTICE M.S.K. JAISWAL

Criminal Revision Case No.1572 of 2013

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Order:

This Criminal Revision Case is directed against the orders, dated 17.07.2013, passed in CrI.M.P.No. 2316 of 2013 in CC No.124 of 2008 by the learned Additional Judicial Magistrate of First Class, Tuni, whereby and whereunder the application, filed by the petitioner/accused to recall PW.1 for the purpose of confronting certain documents, has been dismissed.

2. The second respondent herein filed a complaint against the revision petitioner/accused for the offence punishable under Section 138 of the Negotiable Instruments Act and the same was taken on file by the Court below as C.C.No.124 of 2008. In the said case, both sides evidence was closed and the matter is coming up for arguments. At that stage, the petitioner/accused has filed the aforesaid petition, under Section 311 Cr.P.C., to recall P.W.1 for the purpose of confronting certain documents. The learned Magistrate, on consideration of the material on record, dismissed the said petition, by the impugned order dated 17.07.2013. Aggrieved by the same, the present revision has been filed by the petitioner/accused.

3. Learned counsel for the petitioner/accused submitted that during the pendency of the case, the petitioner/accused has paid Rs.40,000/- on 12.10.2009 and Rs.9000/- on 28.01.2010 and he also deposited Rs.10,000/- into the account of the second respondent/*de facto* complainant, towards repayment of cheque amount and obtained receipts and he wants to confront the said documents by recalling PW.1, but the learned Magistrate, without properly appreciating the same, has erroneously dismissed the petition, therefore, the impugned order is liable to be set aside and the petitioner/accused may be permitted to recall PW.1 for the purpose of confronting the said documents.

4. The criminal jurisprudence requires sufficient opportunity to be afforded to the accused to put forth his defence and to cross-examine the prosecution witnesses. As per Section 311 Cr.P.C., any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case. In the instant case, evidence was completed and the matter is coming up for arguments and at that stage the revision petitioner-accused filed the present petition to recall P.W.1 for confronting certain documents stating that during the pendency of the case he made certain payments and obtained receipts and they are required to be marked through PW.1 for just decision of the case. In the circumstances, unless the PW.1 is recalled and confronted the documents upon which the petitioner/accused seeks to rely in proof of his contention that he paid certain amounts, the same may not be brought on record. In view of the facts and circumstances of the case, I feel that the revision petitioner/accused be given an opportunity to recall PW.1 for the purpose of confronting the documents.

5. Accordingly, the Criminal Revision Case is allowed and the impugned order, dated 17.07.2013, passed by the learned Additional Judicial Magistrate of First Class, Tuni, in CrI.M.P.No. 2316 of 2013 in CC No.124 of 2008, is set aside. Consequently, the learned Magistrate is directed to recall PW.1 for marking the documents relied on by the petitioner/accused, however, the entire evidence has to be completed within a period of two (2) months from the date of receipt of a copy of this order.

6. As a sequel thereto, the miscellaneous petitions, if any, pending in this Criminal Revision Case shall stand closed.

M.S.K. JAISWAL, J

Date: 02.11.2015

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