

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 27.07.2016

PRONOUNCED ON: 03.08.2016

CORAM:

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

Crl.O.P. Nos.15243 & 15244 of 2016

Rajani Petitioner in Crl.O.P. No.15243 of 2016

Nagarajan Petitioner in Crl.O.P. No.15244 of 2016

vs.

Gopakumaran Nair
Prop. Pioneer Inc.
represented by his
Power of Attorney Agent
G. Sundaresan
Accounts Manager
No.25, V.G.P. Murphy Square
II Cross Street
St. Thomas Mount
Chennai 600 016

Respondent in both the Crl.O.Ps.

Criminal Original Petitions filed under Section 482, Cr.P.C. to call for the records in Crl.M.P. Nos.1572 and 1573 of 2016 in C.C. Nos.158 and 159 of 2015 respectively on the file of the Judicial Magistrate (Fast Track Court) Alandur, Chennai and examine the correctness of the orders dated 13.06.2016 passed in Crl.M.P. Nos.1572 and 1573 of 2016 in C.C.Nos.158 and 159 of 2015 respectively and set aside the same.

For petitioner in
both the Crl.O.Ps. Mr. M. Anandraj

COMMON ORDER

This Criminal Original Petitions have been filed to call for the records in Crl.M.P. Nos.1572 and 1573 of 2016 in C.C. Nos.158 and 159 of 2015 respectively on the file of the Judicial Magistrate (Fast Track Court) Alandur, Chennai and examine the correctness of the orders dated 13.06.2016 passed in said

Criminal Miscellaneous Petitions and set aside the same.

2 For the sake of convenience, the petitioner and the respondent will be referred to as "accused" and "complainant" respectively.

3 Heard the learned counsel for the accused and the complainant.

4 The complainant in these cases is one Gopakumaran Nair, Proprietor of Pioneer Inc. Pioneer Inc. entered into two separate rental agreements of even date, viz., 01.10.2012, with each of the accused (Rajani and Nagarajan-who are wife and husband respectively) and had taken on rent, two portions for their office purpose. The complainant had paid rental advance towards the same and after termination of the rental agreements on 16.01.2014 by way of two rental agreement termination notices, the complainant demanded the return of rental advance, towards which, the accused gave two cheques dated 15.10.2014 for Rs.25,25,000/- and Rs.24,25,000/- respectively, which, when presented by the complainant, were dishonoured. The complainant issued two statutory demand notices to the accused and thereafter, has filed C.C. Nos. 158 and 159 of 2015 before the Judicial Magistrate (Fast Track Court) Alandur, Chennai, against Rajani and Nagarajan (accused) respectively, under Section 138 of the Negotiable Instruments Act, 1881.

5 At this juncture, it may be pertinent to state here that Gopakumaran Nair, the Proprietor of Pioneer Inc., has given power of attorney to G.Sundaresan, Accounts Manager, on the strength of which, the complaints have been filed.

6 Trial commenced in both the cases with the filing of proof affidavits dated 01.06.2015 by G. Sundaresan (P.W.1). Thereafter, Sundaresan (P.W.1) was cross-examined by the accused. After the cross-examination of Sundaresan (P.W.1), one Yuvaraj was examined as P.W.2 on the side of the complainant. The accused filed CrI.M.P. Nos.1572 & 1573 of 2016 in C.C. Nos.158 and 159 of 2015 under Section 311 Cr.P.C. to recall P.W.1 for cross-examination, which was dismissed by the Trial Court by two separate orders on 13.06.2016, after hearing both parties, challenging which the accused are before this Court.

7 Heard Mr. M. Anandaraj, learned counsel for the accused.

8 Mr. Anandaraj submitted that Sundaresan (P.W.1) is only a power agent of Gopakumaran Nair and therefore, Gopakumaran Nair should be examined.

9 This Court perused the petitions in Crl.M.P. Nos.1572 and 1573 of 2016 filed by the accused under Section 311, Cr.P.C. Even in the petitions, the prayer is to recall the witness of the complainant (P.W.1) and the prayer is not to recall Gopakumaran Nair. In fact, Gopakumaran Nair was not examined by the complainant at all and therefore, there is no question of filing a petition under Section 311 Crl.P.C. for cross-examining Gopakumaran Nair.

10 A witness must be examined-in-chief by a party, who wants to prove a fact and only thereafter, will the adverse party have the right to cross-examine him. When Gopakumaran Nair himself has not been examined on the side of the complainant, the accused cannot file an application under Section 311 Cr.P.C., insisting that Gopakumaran Nair should be examined. Whom to examine and whom not to examine is the prerogative of the prosecution. The accused cannot compel the prosecution to examine certain persons as witnesses. It is for the prosecution to prove their case, for which they are entitled to examine witnesses to prove the fact in issue or relevant facts. Therefore, the Trial Court was perfectly justified in dismissing the prayer of the accused qua re-calling P.W.1 for cross examination, in both the petitions.

11 As regards recalling Sundaresan (P.W.1), on a perusal of his deposition, it is clear that he was examined-in-chief via proof affidavit on 13.06.2015 and he has been extensively cross-examined by the accused on 24.11.2015, 20.01.2016, 31.03.2016 and 11.04.2016. Hence, the impugned orders passed by the Trial Court, rejecting the petitions of the accused, do not suffer from any infirmity and as such, do not warrant interference by this Court.

In the result, these Criminal Original Petitions are dismissed as being devoid of merits.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

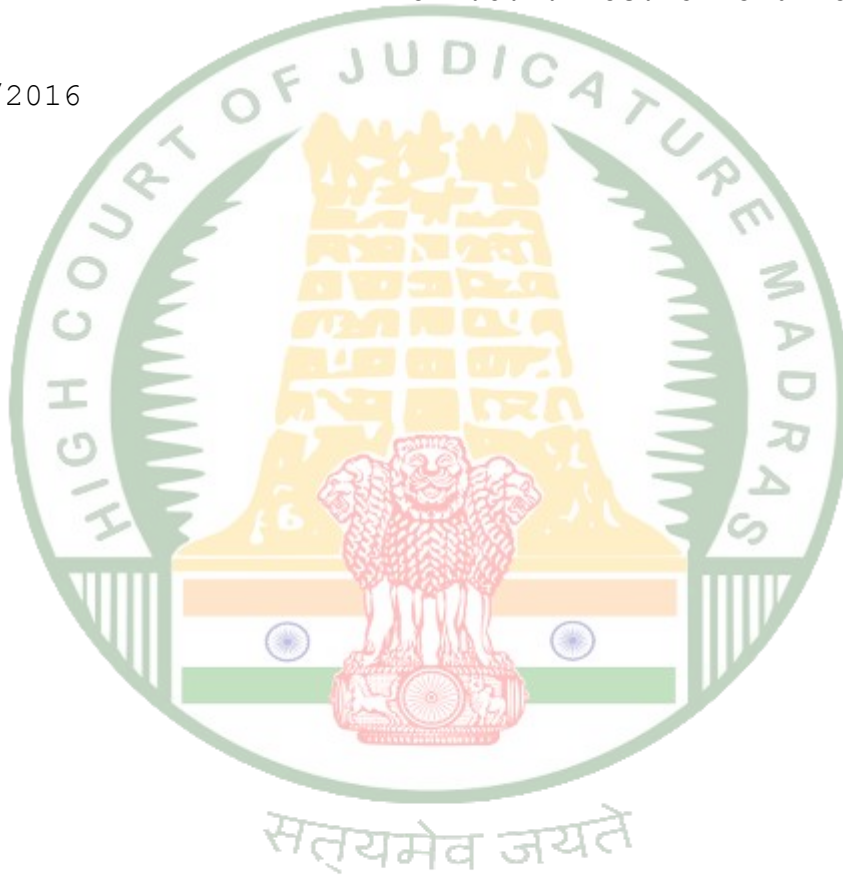
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To

- 1 The Judicial Magistrate
(Fast Track Court)
Alandur, Chennai
- 2 The Public Prosecutor
High Court of Madras
Chennai 600 104

CrI.O.P. Nos.15243 & 15244 of 2016

lrs co
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