

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2016

CORAM

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

Cr1.O.P. No.16534 of 2016 & Cr1.M.P. Nos.8016 & 8017 of 2016

Muthukumar

... Petitioner/Petitioner
/Accused

Vs.

Velmurugan

... Respondent/Respondent
/Complainant

Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the order made in C.M.P. No.2699 of 2016 in S.T.C. No.2595 of 2016 dated 12.05.2016 on the file of the Judicial Magistrate No.II, Pollachi, Coimbatore District.

For petitioner Mr.C. Veeraraghavan

For respondent Mr. D. Selvaraju

ORDER

This Criminal Original Petition is filed seeking to set aside the order dated 12.05.2016 made in C.M.P. No.2699 of 2016 in S.T.C. No.2595 of 2016 on the file of the Judicial Magistrate No.II, Pollachi, Coimbatore District.

2 For the sake of convenience, the parties are referred to by their name.

3 It is the case of Velmurugan (complainant) that Muthukumar (accused) is a tenant under him and that Muthukumar was in rental arrears, towards which, he had given two cheques for Rs.50,000/- each representing rent for four months. When the cheques were presented by Velmurugan, they were dishonoured, pursuant to which, Velmurugan issued a statutory notice dated 18.09.2015 under Section 138 of the Negotiable Instruments Act to Muthukumar and thereafter, has filed S.T.C. No.2595 of 2016 for an offence under Section 138, ibid, which is pending trial before the Judicial Magistrate No.2, Pollachi.

4 After the examination of prosecution witnesses, Muthukumar filed CrI.M.P. No.2699 of 2016 in S.T.C. No.2595 of 2016 to examine Selvaraj, Manokaran, Premkumar and Sivakumar as defence witnesses and the Trial Court, after hearing both sides, dismissed the same on 12.05.2016, challenging which, Muthukumar is before this Court.

5 Heard Mr. Veeraraghavan, learned counsel for Muthukumar and Mr.D. Selvaraju, learned counsel for Velmurugan.

6 Mr. Veeraraghavan, learned counsel for Muthukumar submitted that it is the consistent case of Muthukumar that he had paid Rs.6 lakhs as cash to Velmurugan and that the impugned cheques did not represent the monthly rent, whereas, they represent part of the consolidated lease amount, which is of course, disputed by Velmurugan. In this regard, Muthukumar wants to examine the aforesaid four persons on the ground that they are in know of things and that they were also present when the said sum of Rs.6 lakhs is said to have been given by Muthukumar to Velmurugan.

7 The Trial Court has dismissed the petition on the ground that 4 witnesses cannot be summoned on the ipse dixit of Muthukumar that they know the transaction in question without anything more. Since the case is a summary trial, the reasons given by the Magistrate cannot be totally faulted. But, at the same time, the accused also deserves a fair trial in a case under Section 138 of the Negotiable Instruments Act, where, the burden under Section 139 is on the accused to discharge.

8 Taking into consideration the facts and circumstances of the case, this Court is of the considered view that it will be in the interest of justice if Muthukumar is permitted to examine Selvaraj and Premkumar as defence witnesses.

9 Accordingly, the Trial Court is directed to permit Muthukumar to examine Selvaraj and Premkumar as defence witnesses. The Trial Court shall ensure that the defence witnesses are examined within a period of two weeks from the date of receipt of a copy of this order and if Muthukumar fails to bring the two witnesses, as directed by this Court, he will forfeit his right to examine them.

In the result, this Criminal Original Petition stands allowed in part. Connected Crl.M.Ps. are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1 The Judicial Magistrate No.II
Pollachi
Coimbatore District

2 The Public Prosecutor
High Court of Madras
Chennai 600 104

+1cc to Mr.C.Veeraraghavan, Advocate Sr.49645

+2cc to Mr.D.Selvaraju, Advocate Sr.49936

vgi[col]
srg 06/09/2016

Crl.O.P. No.16534 of 2016

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