

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 04..11.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Criminal Original Petition No.17193 of 2014
and
M.P.No.1 of 2014

B.Jagadesh ... Petitioner/Petitioner/Complainant

-Versus-

H.Sivakumar @ Sivan ... Respondent/Respondent/Accused

Prayer: This petition is filed under Section 482 Cr.P.C. praying to set aside the order dated 30.05.2014 passed in C.M.P.No.879 of 2014 in S.T.C.No.317 of 2007 by the learned Judicial Magistrate, Kothagiri, The Nilgiris District.

For Petitioner : Mr.Ma.P.Thangavel

For Respondent : Mrs.Bhavani Subbarayan for
M/s.Royan Law Associates

ORDER

For the sake of convenience, the parties in this proceedings will be referred to as accused and complainant respectively.

2. It is the case of the complainant that the accused had borrowed a sum of Rs.2,50,000/- from him and in discharge of his liability the accused had issued a cheque for the said amount on 30.01.2007 which on presentation was dishonoured by the complainant's bank. Thereafter, the complainant issued a statutory notice and since the accused did not make the payment, he initiated prosecution under Section 138 of The Negotiable Instruments Act which is now pending on the file of the learned Judicial Magistrate, Kothagiri, The Nilgiris, in S.T.C.No.317 of 2007.

3. This case appears to have chequered history. The complainant examined himself as P.W.1 in chief on 19.12.2007 and he was cross examined on 28.08.2009. Thereafter, the accused was questioned under Section 313 of Cr.P.C. On the side of the accused D.W.1 was examined in full 20.04.2010 and D.W.2 was

examined in full on 10.06.2010. After that the accused waived his right of silence and filed a petition under Section 315 of Cr.P.C. and entered into witness box to give evidence as D.W.3. He was examined in chief on 21.05.2015 and was cross examined on 07.06.2013. Thereafter, the accused filed a petition under Section 311 of Cr.P.C. pursuant to which the complainant was once again recalled and cross examined on 04.03.2014. At that juncture, the complainant filed a petition in CrI.M.P.No.879 of 2014 in STC No.317 of 2007 on 05.04.2014 which was dismissed by the learned Magistrate on 30.05.2014. Challenging the order of the learned Magistrate dismissing the petition filed under Section 311 of Cr.P.C. he is now before this court with the present original petition.

4. Heard the learned counsel for the complainant and the learned counsel for the accused and perused the records carefully.

5. The learned counsel for the complainant contended that the complainant should be given one more opportunity to prove his case.

6. Per contra, the learned counsel for the respondent contended that this case has been dragged from the year 2007 onwards and that after the closure of examination of witnesses on the side of defence, the complainant cannot be allowed to fill up the lacuna.

7. This court gave its anxious consideration to the rival submissions.

8. A petition under Section 311 of Cr.P.C. can be entertained at any point of time before the judgement is delivered if it is shown to the court that the evidence of such witness is essential to just decision of the case. Therefore, this court examined the petition that was filed by the complainant. In the petition, the complainant has merely stated as follows:-

"3. The above named complainant further submit that when he shifted his residence some of the important documents were misplaced and on repeated search the vital document in this case traced out only yesterday.

4. The said document is an important document for just decision of this case.

5. The above named complainant further submits that non production of the document in time is neither wilful nor deliberate.

6. It is therefore prayed that this Hon'ble court may be pleased to recall P.,W.1

in the above case to adduce further evidence and mark the important document through P.W.1 in the above case before this Hon'ble Court and render justice."

9. The averments in the petition do not even satisfy the minimum requirements of the provision under Section 311 of Cr.P.C. The accused, who had waived his right of silence in this case as stated above, examined himself under Section 315 of Cr.P.C. as D.W.3 and thereafter, a bland petition under Section 311 of Cr.P.C. has been filed by the complainant without even disclosing the details about the alleged vital document. This court does not find any infirmity or irregularity in the order passed by the trial court.

10. In the result, the criminal original petition is devoid of merits and the same is accordingly dismissed. The trial court is directed to expedite the trial and to dispose of the case within a period of four weeks from the date of receipt of a copy of this order since the matter is of the year 2007. Consequently, connected MP is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kmk

To

1. The Judicial Magistrate,
Kothagiri,
The Nilgiris District.

+1cc to Ma.P.Thangavel, Advocate Sr.63473
+1cc to M/S.Royan Law Associates Sr.63364

Cr1.O.P.No.17193 of 2014

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sr 07/12/2016