

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP No.19574 of 2016

and

Crl.M.P.Nos.9167 & 9233 of 2016

1. P.Maharajan
2. M/s.Raina Corporate Solution,
rep by Authorised Signatory
P.Maharajan .. Petitioners/Petitioner/Accused

Vs

V.Yoghandrar Babu Venugopal ..Respondent/Respondent/Complainant

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order passed by the Principal Session Court at Chennai in Crl.R.C.No.1 of 2016 dated 21.06.2016 confirmed by the order 30.10.2015 passed in Crl.M.P.No.2391 of 2015 in C.C.No.216 of 2013 passed by the Learned II Fast track Court at Egmore.

For Petitioners : Mr.A.Balasingh Ramanujam

O R D E R

This petition has been filed to set aside the order passed by the Principal Session Court at Chennai in Crl.R.C.No.1 of 2016 dated 21.06.2016 confirmed by the order 30.10.2015 passed in Crl.M.P.No.2391 of 2015 in C.C.No.216 of 2013 passed by the Learned II Fast track Court at Egmore.

2. It is seen that the petitioners are facing trial in C.C.No.216 of 2013 for offence under Section 138 of Negotiable Instrument Act before the Metropolitan Magistrate Court, Fast Track 2, Egmore. During the trial the petitioners cross examined PW1 on 28.04.2015 and 11.08.2015, thereafter the petitioners filed Crl.M.P.No.2391 of 2015 in C.C.N.216 of 2013 under Section 311 Cr.P.C for once again recalling and cross examining PW1, which was dismissed by the Trial Court on 30.10.2015, aggrieved by the order, the petitioner preferred

CrI.R.C.No.1 of 2016 before the District & Session Judge, Chennai, which was dismissed on 21.06.2016, aggrieved by which the petitioners are before this Court under Section 482 Cr.P.C.

3. Under Section 397(3) Cr.P.C. when, once a party elects to approach the Session Court he is precluded from approaching the High Court U/s.397 Cr.P.C. However, in extraordinary cases, where the orders passed by the Courts below suffer from serious illegality resulting in prejudice to the party, it is open for the party to file a petition under Section 482 Cr.P.C. In this case, both the Courts below have considered the plea of the petitioner and have given a findings on fact that the petitioner has cross examined PW1 on 28.08.2015 and on 11.08.2015 and that he has not given any convincing reason for once again recalling PW1. Apart from that, it is seen that the trial of the case is pending from 2013. In A.G. Vs. Shiv Kumar Yadav and another, [(2015) 9 Scale 649], the Supreme Court has laid down the law relating to recalling of the witnesses under Section 311 Cr.P.C.,

In the light of the above this is not a fit case to interfere with the orders passed by the Courts below and accordingly, this petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

- 1.The Registrar,
The Principal Sessions Court,
Chennai.
- 2.The Metropolitan Magistrate No.XIV,
Fast Track Court-2,
Egmore.

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srg 21/09/2016