IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Crl.O.P.No.2015 of 2016
and Crl.M.P.No.1153 of 2016

S.C.Nagabushanam .. Petitioner/Petitioner/Accused

Vs.

M/S.Sujana Metal Products Ltd.
Rep. by its Manager S.Kannan
Nijapadam
No.6/9 Damodaran street
Opposite Spur Tank road
Chetpet, Chennai-31. .. Respondent/Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to set aside the order passed by the learned Metropolitan Magistrate (Fast Track Court No.II) Egmore, Chennai-8, made in C.M.P.No.51/2015 in C.C.No.4159/2012 dated 06.01.2016.

For Petitioner :Mr.C.S.Saravanan

For Respondent :Mr.S.K.Srinivasan

O R D E R

The petitioner has come forward with this petition challenging the order passed by the learned Metropolitan Magistrate (Fast Track Court No.II) Egmore, Chennai-8, made in C.M.P.No.51/2015 in C.C.No.4159/2012 dated 06.01.2016.

2.The respondent as a complainant filed a private complaint against the petitioner for an offence punishable under Section 138 of the Negotiable Instruments Act stating that the petitioner herein has approached him for the supply of TMT bars and promised to pay the sale consideration raised under invoices promptly within 30 days from the date of delivery. Accordingly, the respondent has supplied the TMT bars to the tune of Rs.4,22,855/- vide invoice dated 31.03.2010. Since the respondent made repeated demands, the petitioner has issued a cheque dated 28.08.2011 for a sum of Rs.30,000/-. When the respondent has presented the cheque for encashment, it was returned as 'insufficient funds' and the same has been intimated to the respondent by debit advice dated 20.10.2011. So the respondent issued a statutory notice. Since the petitioner has neither repaid the amount nor given reply, the respondent has preferred the private complaint against the petitioner.

3.The complainant's side evidence has already been completed and when the matter was posted for argument, the petitioner/accused has filed a petition in C.M.P.No.51 of 2015 under Section 91 Cr.P.C. for a direction to the respondent to produce some documents and the same was dismissed, against which, the present petition has been filed by the petitioner/accused.

4.Learned counsel for the petitioner submits that there was a business transaction between the petitioner and the respondent from 01.01.2010 to 31.12.2015. He has filed the petition under Section 91 Cr.P.C. for sent for documents such as copy of invoice for the purchase by the petitioner to the respondent from 01.01.2010 to 31.12.2015, bank statements of the respondent, income tax returns, original letter dated 27.07.2010 given by the respondent to the petitioner and the copy of complaint given by the respondent against one Prabu Reddy, Sales Manager of the respondent's firm, who had been received money from the petitioner on behalf of the complainant, to prove what is the amount due. But the trial Court without considering the same, dismissed the petition as if the petitioner has filed a petition under Section 311 Cr.P.C. for recall P.W.1. Therefore, he prays for allowing the petition.

5.Resisting the same, learned counsel for the respondent/complainant submits that during June and August 2014, P.W.1's cross-examination has been done and thereafter, the same was closed. But the petitioner kept quite all along, filed the applications one after another only with a view to drag on the proceedings. He further submits that the documents sought for by the petitioner are not relevant to dispose the case. The trial Court after considering all the aspects has rightly dismissed the application. Therefore, he prayed for dismissal of the petition.

6.Heard both sides.

7.A perusal of the complaint reveals that the respondent had supplied TMT bars and promised to pay the sale consideration raised under invoices promptly within 30 days from the date of delivery. Accordingly, the respondent had supplied TMT bars to the tune of Rs.4,22,855/- vide invoice dated 31.03.2010. As the respondent demanded him to repay the same, the petitioner has issued a cheque dated 28.08.2011 for a sum of Rs.30,000/-. When the respondent presented the cheque for encashment, it was returned as 'insufficient funds'. Therefore, the respondent had issued a statutory notice to the petitioner. The petitioner neither repaid the amount nor given any reply and hence, the respondent preferred a private complaint against the petitioner under Section 138 of the Negotiable Instruments Act. The complaint was taken in C.C.No.4159 of 2012 on the file of the learned Metropolitan Magistrate (Fast Track Court No.II) Egmore, Chennai-8.

8.During pendency of the same, the petitioner has filed a petition under Section 91 Cr.P.C. for sent for some documents from the respondent. The trial Court, after hearing both sides, dismissed the application stating that the petition was filed for delaying tactics, since no reason has been assigned as to how those documents are necessary.

9.Now this Court has to decide whether the documents now sought for by the petitioner are relevant for the disposal of the case in C.C.No.4159 of 2012? It is pertinent to note that the respondent has supplied goods to the petitioner between 01.01.2010 to 31.12.2015 and that the petitioner has to pay the amount due of Rs.4,22,855/-. The case of the petitioner is that the said amount was received by one Prabu Reddy, who was the Sales Manager of the respondent's firm. The documents sought for by the petitioner are (i) copy of invoice for the purchase by the petitioner to the respondent from 01.01.2010 to 31.12.2015 (ii) bank statements of the respondent (iii) income tax returns (iv) original letter dated 27.07.2010 given by the respondent to the petitioner and (v) the copy of complaint given by the respondent against one Prabu Reddy, Sales Manager of the respondent's firm, who had been received money from the petitioner on behalf of the complainant. Once goods have been delivered to the petitioner, copy of invoice and delivery note should also have been furnished to the petitioner. So the petitioner must have those documents and instead of filing those documents, he has come forward with the petition under Section 91 Cr.P.C. only with a view to drag on the proceedings.

10.According to the petitioner, he had paid the entire amount through RTGS. If really the petitioner had paid the amount by cash through RTGS, it can be reflected in his statement of Accounts and the petitioner may very well file his bank pass book to prove his case. In my opinion, whether the petitioner paid entire amount to the respondent has to be proved by him by way of examining witness. Furthermore, the petitioner has not mentioned as to how those documents are relevant to prove his defence. Under such circumstances, I am of the view, the petitioner has come forward with the petition under Section 91 Cr.P.C. only with a view to drag on the proceedings that too when the matter has been posted for arguments. The trial Court in para-4 of its judgment, rightly considered the above aspect and dismissed the petition. Therefore, I do not find any reasons to interfere with the findings of the trial Court. The Criminal Original Petition deserves to be dismissed and it is hereby dismissed.

11.At request of the learned counsel for the petitioner, the trial Court is directed to dispose of the case in C.C.No.4159 of 2012 within a period of two months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(AS)

//True Copy//

Sub Assistant Registrar

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To

1.The Metropolitan Magistrate
(Fast Track Court No.II) Egmore, Chennai-8.

2.-do- Through The Chief Metropolitan Magistrate,
Chennai.8

3.The Public Prosecutor
High Court, Chennai.

+ 1 cc to MR.S.K. Srinivasn, Advocate Sr.18615

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RSY(CO)
Eu 06.04.16