

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.09.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.21250 of 2016

1.Srinidhi Fabrics(P) Ltd
Rep. By Its Director
So.S.Sockalingam

2.So.S.Sockalingam

3.So.Valliammai Petitioners

Vs.

Sree Arthanari Dye Chem(P) Ltd
Rep.by its Managing Director
S.K.Sidhuraj,
G.M.Complex, 19, Agilmedu Street,
Sait Colony, Erode-1
Rep. By his Power Agent/Manager,
M.Ramachandran,
163/7,Kumar Arcade, II Floor,
Axis Bank Building, Perundurai Road,
Erode-II.

.... Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C.,
praying to set aside the order passed by the Learned Judicial
Magistrate, Fast Track Court No.1, Erode, dated 22-08-2016 made in
Crl.MP.No.2453 of 2016 in S.T.C.No.266 of 2015 and allow this
Criminal Original Petition.

For Petitioners : Mr.S.Karthikeyan

O R D E R

This petition has been filed to set aside the order passed by
the Judicial Magistrate, Fast Track Court No.1, Erode, dated 22-08-
2016 made in Crl.MP.No.2453 of 2016 in S.T.C.No.266 of 2015.

2.Heard the learned counsel for the petitioners.

3. For the sake of convenience, the petitioners and the
respondents are referred to as complainant and accused respectively.

4. The complainant has lodged a prosecution in S.T.C.No.266 of
2015 under Section 138 of the Negotiable Instruments Act, which is
pending on the file of the Judicial Magistrate, (Fast Track Court
No.I,) Erode, against the accused.

5. Admittedly, the complainant has examined the witnesses and the accused were questioned under Section 313 Cr.P.C. At the request of the accused, PW1 was recalled under Section 311 Cr.P.C. and was cross examined by the accused. When the matter was posted for production of defense witnesses, the accused filed a petition in CMP.No.2453 of 2016 under Section 254(2) Cr.P.C., to examine the following persons viz.,

(1) The Registrar or Authorised Officer, Government of India, Ministry of Finance, Department of Financial Service, Board for Industrial and Financial Reconstruction, Jawahar Vyapar Bhawan, 1, Tolstoy Marg, New Delhi-110 001.

To bring the relevant records pertaining to case No.50 of 2012 pending in BIFR and give evidence.

(2) Electricity Board, Sipcot, Perundurai.

To bring the relevant records pertaining to Electricity connections of M/s.Srinidhi Fabrics Private Limited, Sipcot, Perundurai and give evidence regarding the disconnection of electricity done to Srinidhi Fabrics Private Limited.

S.C.No.HT.217.

which has been rightly dismissed by the trial court on 22.08.2016, aggrieved by which, the accused are before this court.

6.Mr.S.Karthikeyan, learned counsel for the accused strongly contended that the accused have to be given a fair opportunity in a criminal prosecution to defend themselves and therefore, the dismissal order passed by the Judicial Magistrate, is unsustainable.

7. This Court gave its anxious consideration to the submission of the learned counsel for the accused.

8. It is true that in any criminal prosecution, a fair opportunity should be given to the accused to adduce evidence on his behalf, in order to demonstrate to the Court, the falsity in the prosecution case. However, in this case, the accused have not given any reasons for summoning the aforesaid two officials, even without naming them. It is imperative that the accused cannot summon all and sundry in the guise of examining them as defense witnesses. The accused should disclose the name of the persons, address and other particulars of the persons to be summoned and also explain the Court, though not in detail but, at least by giving minimum reasons as to how the evidence of those persons is going to support his contention.

9.In this case, these aspects are miserably absent in the petition filed by the accused and therefore, the order passed by the Judicial Magistrate, (FTC No.1), Erode, does not warrant interference. That apart, the accused seek to call for some officials from New Delhi and Tamil Nadu Electricity Board without any good reasons thereof.

10. However, liberty is given to the accused to file a fresh application naming the persons, whom, they want to examine and also, how that evidence is going to be relevant for the case. The accused shall file their application within two weeks from the date of receipt of a copy of this order. On such filing, the Judicial Magistrate, (Fast Track Court No.I) Erode, shall independently pass orders on merits. In the fresh petition, the accused cannot include the officials from the departments mentioned in Crl.M.P.No.2453/2016 in S.T.C.No.266 of 2015.

11.The accused are directed to furnish a bond for a sum of Rs.1000/- each with two sureties under Section 88 Cr.P.C as directed by the Supreme Court Indian Bank Association and others Vs. Union of India and others reported in (2014-2-LW(Crl) 400 within two weeks from the date of receipt of a copy of this order.

12.With the above directions, this Criminal Original Petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

rm

To

1.The Judicial Magistrate,
Fast Track Court No.1,
Erode.

2.The Public Prosecutor,
High Court,
Madras.

+1 CC to Mr.S.Karthikeyan, Advocate SR.No.53084

CO-LRS

ths : 22.10.2016

CRL.OP.No.21250 of 2016