

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.09.2016

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.OP.Nos.21251 to 21253 of 2016
and
Crl.MP.Nos.9836 to 9838 of 2016

Mr. Imtiaz Ahmed Khan
Prop.Taha Enterprises
No.126, 7th Main, 4th Block,
Jaya Nagar,
Bangalore-560 011

.... Petitioner in all
Crl.OPs.
Vs.

M/s.Agri Gold Exims Ltd.,
Rep. By its Vice President
Mr.P.Venkatesan
New No.601, Old No.6,
12th Avenue,
Ashok Nagar,
Chennai-600 083.

.... Respondent in all
Crl.OPs.

Common Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for records in C.C.Nos.7788, 7790 and 7789 of 2007 respectively on the file of the learned FTC-III, Metropolitan Magistrate, Saidapet, Chennai-15 and set aside the docket order dated 21.07.2016, dismissing the 311 Cr.P.C.Petition filed by the petitioner in Crl.M.P.Nos.3651, 3650 and 3649 of 2016 respectively.

For Petitioner : Mr.M.Mohammed Rafi
in all Crl.OPs.

COMMON O R D E R

These criminal original petitions have been filed to call for records in C.C.Nos.7788, 7790 and 7789 of 2007 respectively on the file of the learned FTC-III, Metropolitan Magistrate, Saidapet, Chennai-15 and set aside the docket order dated 21.07.2016, dismissing the 311 Cr.P.C.Petition filed by the petitioner in Crl.M.P.Nos.3651, 3650 and 3649 of 2016 respectively.

2. For the sake of convenience, the parties will be referred to as complainant and accused.

3. The complainant has initiated three prosecutions in C.C.Nos.7788, 7789 and 7790 of 2007 respectively under Section 138 of The Negotiable Instruments Act against the accused and the same is now pending on the file of the Fast Track Court No.III, Metropolitan Magistrate, Saidapet, Chennai-600 015.

4. The case was instituted in the year 2007 and from 2007 to 2016, some how the accused have managed to prolong the case for some reason or the other, though the Negotiable Instruments Act clearly states that the prosecutions should be completed within six months. It appears that PW1 was cross-examined by the accused on 28.05.2013 and 17.03.2014. Thereafter, the accused filed an application under Section 311 Cr.P.C. Thereafter, the learned magistrate passed the adjudication order, which reads as follows:

"06.11.15

Complainant Present. Accused absent. 317 filed & Allowed. For cross of PW1 finally call on 02.02.16 else suitable order passed

-Sd/-

FTC-III, Metropolitan Magistrate
02.02.16

Complainant absent. 256 filed & allowed. Accused absent. 317 filed & allowed. Conditional order passed on 06.11.2015 even after conditional order complainant failed to appear before this court for cross of PW1. Case is pending from 2007. Sufficient opportunities given. Hence cross of PW1 closed for DW's if any call on 15.04.2016.

-Sd/-

FTC-III, Metropolitan Magistrate
15.04.16

Complainant Present. Accused absent. 317 filed & Allowed. 311 petition filed. For finally counter finally call on 09.06.2016.

-Sd/-

FTC-III, Metropolitan Magistrate
09.06.16

Complainant Present. Accused absent. 317 filed & Allowed. No counter in 311 for orders in 311 finally call on 21.07.16.

-Sd/-

FTC-III, Metropolitan Magistrate
21.07.16

Complainant absent. Accused absent. No representation. Heard perused already the Accused cross examined the court is detailed on 28.05.13 and 17.03.14 and filed this 311 petition after 2 years. Hence, this court feels that this petition is filed only to drag on the proceedings. Hence, this court is not inclined to allow this petition at this stage. Hence 311 petition dismissed, for PW1 if any finally call on 29.09.16 else suitable order passed.

-Sd/-

FTC-III, Metropolitan Magistrate"

5. It is the grievance of the accused that the cross examination was not completed on 17.03.2014 and some more questions have to be put to the PW1.

6. It is further seen that Mr.S.Panneer Selvam, learned Counsel for the complainant has also endorsed no objection on 09.06.2016, in the petition filed by the accused under Section 311 Cr.P.C. Under such circumstances, it is contended by Mr.M.Mohammed Rafi, learned counsel for the accused that the Magistrate ought not to have closed the case on 21.07.2016.

7. This court gave its anxious consideration to the submission of Mr.Mohammed Rafi.

8. If this case is admitted and notice is ordered to the complainant, it will take another five more years for the litigation to end.

9. From a reading of the adjudication order dated 02.02.2016, it is seen that a conditional order has been passed on 06.11.2015, in spite of which, PW1 has not appeared for cross-examination. For the failure of PW1 to appear for cross examination, the case evidence of PW1 cannot be closed to the prejudice of the accused. Under such circumstances, this court is of the view that it will be in the interest of justice, if an opportunity is given to cross examine PW1.

10. In the result, the accused is directed to appear before the trial court within two weeks from the date of receipt of a copy of this order. On his appearance, he shall be released on bail under Section 436 Cr.P.C on the same day on condition that he shall furnish a bond for Rs.5,000/- with one surety (local surety) to the satisfaction of the learned Magistrate, individually in each case. Only then, the petitioner will be entitled to relief of suspension of sentence under section 389 Cr.P.C., in the event of his conviction and sentence imposed by the trial Court.

11. The trial court is directed to recall PW1 within two weeks from the date of receipt of a copy of this order, on a date convenient to the Court and on that day, the accused shall pay Rs.2,000/- (Rs.2,000/- x 3 cases=6,000) in each case as cost to PW1 and PW1 shall be cross examined on that day. If on the appearance of PW1, the accused does not cross examine him for any reason including boycott of courts, the accused will forfeit his right to cross examine PW1.

With the above directions, these Criminal Original Petitions are closed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The learned FTC-III, Metropolitan Magistrate,
Saidapet, Chennai-15

CRL.OP.Nos.21251 to 21253 of 2016
and

Crl.MP.Nos.9836 to 9838 of 2016

rj co

kra 17.10.2016

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