

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2016

CORAM:

THE HON'BLE MR.JUSTICE R.SUBBIAH

Crl.O.P.No.24790 of 2013

and

M.P.Nos.1 & 2 of 2013

Madhawaraj Shirwa

.... Petitioner/Accused

Vs.

Skyways Air Services Private Limited,
Rep. by its Accounts Assistant Manager

Mr.Chidambaram Murali,
12/73, Thiruvalluvar Nagar,
Alandur, Chenna-600 016.

.... Respondents/Complainant

Prayer: Petition filed under Section 482 of Cr.P.C., praying to set aside the order dated 26.08.2013 in C.C.No.8363 of 2007 passed by the learned Metropolitan Magistrate, FTC-III, Saidapet, Chennai.

For Petitioner : Mr.M.Balasubramanian

For Respondent : Mr.K.S.Kumar

ORDER

This petition has been filed by the petitioner praying to set aside the order dated 26.08.2013 in C.C.No.8363 of 2007 passed by the learned Metropolitan Magistrate (FTC-III), Saidapet, Chennai, allowing the application under Section 311 of Cr.P.C., filed by the respondent to recall P.W.1 and to mark certain documents.

2.The petitioner herein is an accused in C.C.No.8363 of 2007 pending on the file of the learned Metropolitan Magistrate (FTC-III), Saidapet, Chennai. The respondent herein lodged a private complaint before the Magistrate, against the petitioner, which culminated in C.C.No.8363 of 2007, alleging that as per the request of the petitioner herein, the respondent had transported the garments of the petitioner to the foreign countries and after exporting garments, the respondent/complainant raised their freight charges. The petitioner/accused issued five cheques totalling to the tune of Rs.9,08,925/-, towards freight charges, in favour of

the respondent. When the said cheques were presented for encashment, the same were dishonoured. Hence, after issuing statutory notice, the respondent/complainant filed the private complainant under Section 138 of Negotiable Instruments Act. On completion of trial, after arguments were over, the case was posted for judgment on 25.02.2013. While so, the respondent/complainant filed an application under Section 311 of Cr.P.C., to recall P.W.1 in order to mark certain documents. The said application was opposed by the petitioner, by filing a detailed counter. However, the learned Magistrate allowed the said application, by passing a single line order, which reads as follows:-

"Heard. The reasons stated in the petition are accepted. Hence, the petition is allowed."

Aggrieved of the same, the present petition has been filed by the petitioner before this Court.

3.The learned counsel for the petitioner submitted that the respondent/complainant wanted to mark certain documents, which came into existence after the commencement of the trial. Furthermore, after completion of the arguments on either side, when the case was posted for judgment, the application under Section 311 of Cr.P.C., was filed by the respondent/complainant; that under such circumstances, the Court below ought to have dismissed the application; but, instead of doing so, the Court below, by passing a single line order, has allowed the application. In this regard, the learned counsel for the petitioner has also relied upon the decision of this Court reported in 2001-2 LW (Crl) 534 [A.Radhakrishnan Vs. Income Tax Officer, City Circle 1 (4), Madras-34]. The factual aspects of the said case would show that in the said case, the trial was over and the petitioner therein was also questioned under Section 313 of Cr.P.C.; thereafter, a petition under under Section 311 of Cr.P.C. was filed to recall some witnesses; the learned Magistrate allowed the said petition. When the same was challenged before this Court, the learned single judge of this Court set aside the said order, observing that if the petition is allowed, the same would amount to filling the lacuna in the case. Thus, by relying upon the said judgment, the learned counsel for the petitioner submitted that the impugned order passed by the Court is liable to be set aside.

4.The learned counsel for the respondent has also made a detailed argument, opposing the praying of the petitioner herein.

5. I have carefully heard submissions made on either side and perused the materials available on record. I find that the documents, where are sought to be marked by the respondent/complainant, came into existence only after the

commencement of trial. Moreover, after completion of argument on either side, the case was also posted for pronouncing judgment; at that juncture, the application under Section 311 of Cr.P.C. was filed by the respondent herein/complainant. Without assigning any valid reason, the Court below has allowed the application, by passing a single line order. In my considered opinion, after posting the matter for pronouncing judgment, the Trial Court ought to have dismissed the said application filed under Section 311 of Cr.P.C. If such application is allowed, it will amount to filling the lacuna in the case. Therefore, I am of the opinion that the impugned order passed by the Court below is liable to be set aside and accordingly, the same is set aside.

In fine, the criminal original petition is allowed as prayed for. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

ssv

To,

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

2.The Public Prosecutor,
Madras High Court, Madras.

+1cc to Mr.K.S.Kumar Advocate Sr.5665

+1cc to Mr.M.Balasubramanian Advocate Sr.5622

CrI.O.P.No.24790 of 2013
and
M.P.Nos.1 & 2 of 2013

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SR(CO)
RVR 12/02/2016