

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. No.25041 of 2016
and Crl.M.P.No.12135 of 2016

G.Amanulla

Petitioner

Vs

Nilkamal Limited

A limited company incorporated
under the Companies Act

Having its registered office &
factory at

Survey No.354/2 and 354/3

Rakholi - Dapada road, Village

Vasona and also at Kharadapada

Union territory of Dadar

and Nagar Haveli.

Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in connection with the order passed in Crl.M.P.No.4397/2016 in C.C.No.3265 of 2014 on 24.10.2016 by the learned Metropolitan Magistrate, Fast Track Court-IV, George Town, Chennai-1 and set aside the same.

For petitioner :Mr.P.Vijendran

O R D E R

This petition has been filed to call for the records in connection with the order passed in Crl.M.P.No.4397/2016 in C.C.No.3265 of 2014 on 24.10.2016 by the learned Metropolitan Magistrate, Fast Track Court-IV, George Town, Chennai-1 and set aside the same.

2. Heard the learned counsel for the petitioner.

3. For the sake of convenience, the petitioner and the respondent are referred to as the accused and the complainant.

4. The complainant has initiated a prosecution in C.C.No.3265 of 2014 against the accused, which is now pending on the file of the Metropolitan Magistrate, FTC-IV (Magisterial level), George Town for an offence u/s 138 of the Negotiable Instruments Act. It is the case of the complainant that the accused had purchased certain materials from the complainant, in discharge of which, he had issued the impugned cheque for Rs.10 lakhs dated 14.05.2016, and that when the complainant presented the cheque, the same was dishonoured.

The complainant issued statutory notice and thereafter, instituted the prosecution.

5. On behalf of the complainant, P.W.1 was examined-in-chief by filing his proof affidavit dated 18.05.2015. He was not cross examined by the accused. The accused filed CrI.M.P.No.4397 of 2016 in C.C.No.3265 of 2014 u/s 311 Cr.P.C. to recall P.W.1, which was dismissed by the trial Court on 24.10.2016, challenging which the accused is before this Court.

6. Learned counsel for the petitioner submitted that, if one opportunity is given to the accused, he would cross examine P.W.1, otherwise, undue prejudice would be caused to him. Learned counsel also submitted that the accused had paid Rs.25,000/- to the complainant on 02.06.2016 as part of settlement and that he is ready and willing to pay the balance amount within four weeks, if time is granted.

7. This Court gave its anxious consideration to the submission made by the learned counsel for the petitioner/accused and also perused the impugned order.

8. From the impugned order, it is seen that P.W.1 was present on 11 dates and the accused did not choose to cross examine him. Even in the petition filed u/s 311 Cr.P.C., the accused has merely stated that his counsel was unable to attend the Court on that date.

9. In this context, it is worth referring to Proviso to Section 309, Cr.P.C., which reads as under:

"Provided also that--

a no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;

b the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment;

c where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be."

Therefore, there is no infirmity in the order passed by the trial Court. Hence this petition is dismissed. Consequently, connected miscellaneous petition is closed. However the learned counsel for the petitioner submitted that if four weeks' time is granted, the petitioner will settle the entire amount to the complainant. Recording his submission, the trial Court is directed to adjourn C.C.No.3265 of 2015 by four weeks from 21.11.2016 for facilitating repayment of the amount to the complainant. If the accused does not settle with the complainant, the trial Court shall proceed with in accordance with law.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gms
To

1.The Metropolitan Magistrate,
Fast Track Court-IV, George Town, Chennai-1.

2.The Public Prosecutor, High Court, Chennai.

+ 1 cc to Mr.P. Vijendran, Advocate SR.65920

RSI (CO)
EU 16.11.16

Cr1.OP No.25041 of 2016

सत्यमेव जयते

WEB COPY