

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP No.25572 of 2016

and

Crl.M.P.Nos.12447 & 12448 of 2016

K. Jagadesh

.. Petitioner

Vs

S. Suthakeswari

rep. by her husband Power Agent

R. Elamurugu

.. Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the order dated 24.10.2016 passed in Crl.R.C. No.22 of 2016 on the file of II Additional District and Sessions Judge, Erode and the same was confirmed in the order dated 06.01.2016 passed in CMP No.8597 of 2015 in S.T.C. No.165 of 2015 on the file of Judicial Magistrate No.I, Erode and allow the above criminal original petition and pass further orders.

For Petitioner : Mr. R. Nalliyappan

For Respondent : Mr.C.Emalias,
Addl.Public Prosecutor

ORDER

This Criminal Original Petition has been filed seeking to set aside the order dated 24.10.2016 passed in Crl.R.C. No.22 of 2016 by the II Additional District and Sessions Judge, Erode and the same was confirmed in the order dated 06.01.2016 passed in CMP No.8597 of 2015 in S.T.C. No.165 of 2015 on the file of Judicial Magistrate No.I, Erode.

2. The petitioner is facing prosecution in S.T.C No.165 of 2015 (for the sake of convenience the parties may be referred as complainant and accused). It is the case of the complainant that the accused had borrowed a sum of Rs.10,00,000/- from the complainant and has failed to return the amount. In discharge of the said liability, the accused had issued a cheque for Rs.15,00,000/-, which was dishonoured due to 'insufficient funds'.

3. The complainant has issued a statutory notice and thereafter initiated prosecution in STC No. 165 of 2015 against the accused and the same is pending on the file of the Judicial Magistrate-I, Erode. The complainant was examined as PW-1 and was subjected to cross examination by the accused, after re-calling him twice under Section 311 Cr.PC. Thereafter the accused is stated to have obtained certain documents under the Right to Information Act from the Inspector of Police, Erode North Police Station and therefore he has filed a petition in CMP No.8597 of 2015 in STC No.165 of 2015 to recall PW-1, which was dismissed by the trial court as early as 06.01.2016. Challenging which, the accused filed a Criminal Revision Petition in CrI.RC No.22 of 2016 and the same was also dismissed by the learned II Additional District and Sessions Judge, Erode on 24.10.2016. Aggrieved by the orders passed by the courts below, the accused is before this Court, under Section 482 Cr.PC.

4. Heard Mr. R. Nalliyappan, learned counsel for the petitioner/ accused.

5. Mr. R. Nalliyappan submitted that the said documents were received by the accused only after PW-1 was cross examined. He also submitted that PW-1 has also filed an application under Section 311 CrPC to re-call PW-2 and PW-3, which was allowed by the trial court and therefore the petition filed by the accused ought to have been allowed.

6. This Court gave its anxious consideration to the submission of the learned counsel for the petitioner.

7. It is seen that PW-1 was not cross examined on that date of examination i.e. 09.09.2014. The accused filed a petition under Section 311 CrPC to recall PW-1 which was allowed by the trial court on 10.08.2015. PW-1 appeared before the trial court but he was not cross examined by the accused. Therefore, the evidence was closed on 19.08.2015. The accused once again filed a petition under Section 311 CrPC, which was allowed by the trial court. Pursuant to which, the accused extensively cross examined PW-1 on 07.10.2015. Thereafter, the accused has filed a petition under 311 CrPC on the aforesaid ground. Even in the said petition filed under Section 311 CrPC, the accused has not stated the reasons in detail, as to the circumstances in which PW-1 should be re-called for the just decision of this case. He has merely made a vague averment that he has received an information under the RTI Act, from the North Police Station, hence he wants to cross examine PW-1.

8. The fact remains that both the trial court and the Revisional court have gone on merits and have negated the plea of the accused. Under Section 397(3) CrPC, when once a party approaches the Session Court, he is precluded from filing a second petition before the High Court. However, a

petition under Section 482 CrPC is maintainable, where it is shown that the orders passed by the courts below is per se illegal and without jurisdiction. In this case, the orders passed by the two courts below, cannot be said to be illegal as they have gone through the merits of the case and have denied the plea of the petitioner.

9. Recently, in State of Haryana vs. Ram Mehar and Others [2016 (8) Scale 192], the Hon'ble Supreme Court has laid down the parameters for re-calling a witness under Section 311 CrPC. The case on hand, does not satisfy the parameters laid therein and therefore this Court does not find any infirmity in the two orders passed by the courts below.

In the result, this Criminal Original Petition is dismissed. Connected Crl.M.P is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

avr

To

1 The II Additional District
and Sessions Judge,
Erode

2 The Judicial Magistrate - I
Erode

3 The Public Prosecutor
High Court of Madras
Chennai 600 104

1 cc to Mr.R. Nalliyappan, Advocate, Sr. 69254

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and

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