

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP No.3395 of 2016  
and Crl.M.P.No.1752 of 2016

1.Sivaram Spinners

rep by its Managing Partner A.Sivaram  
Regd Office at Old D.No.6-A, New D.No.8  
Kuppanna Gounder Street  
Anupperpalayam Pudhur  
Tiruppur 641 652.

2.A.Sivaram

3.S.Kalaivani .. Petitioners/Accused

Vs

Jayam & Co

Proprietor S.Raama Moorthi

Office at D.No.6, Singaravelan Nagar

3rd Street, Angeripalayam Road

Gandhi Nagar (P.O.)

Tiruppur - 641 603

Rep. by Power Agent: S.Ganeshkumar .. Respondent/Complainant

Prayer:- Criminal Original Petition filed under Section 482  
Cr.P.C., to set aside the order dated 25.01.2016 made in memo  
filed in C.C.No.132 of 2013 on the file of the Fast Track Judge  
(Magistrate Level), Tiruppur.

For Petitioners : Mr.M.Guruprasad

For Respondent : Mr.S.Shankar

O R D E R

This petition has been filed to set aside the order dated  
25.01.2016 made in memo filed in C.C.No.132 of 2013 on the file  
of the Fast Track Judge (Magistrate Level), Tiruppur.

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

3. The complainant initiated prosecution in C.C.No.132/2013 against the accused for offence u/s 138 of the Negotiable Instruments Act and the same is now pending on the file of Fast Track Court, [Magistrate level], Tiruppur. The complainant examined his witnesses and thereafter, the accused was questioned u/s 313 Cr.P.C. The case was posted for arguments on 10.09.2015. Thereafter, it was adjourned to 12.09.2015 for judgment. At that juncture, on 11.09.2015, the petitioners filed three applications seeking advance hearing, re-opening of the case and u/s 315 Cr.P.C. to examine the second petitioner and other persons as a defence witness. The trial Court was pleased to allow the applications and permitted only the second petitioner to be examined as a defence witness by order dated 12.09.2015. Thereafter, the second petitioner was examined-in-chief as D.W.2 on 14.09.2015. At that juncture, the accused filed a memo presumably under Section 311 Cr.P.C. for examining one K.V.Stalline and A.Chandrasekar as defence witnesses, which was rejected by the trial Court by order dated 25.01.2016, challenging which the accused/petitioners are before this Court.

4. Heard the learned counsel for the accused/petitioners and learned counsel for the respondent/complainant.

5. Learned counsel for the accused submitted that the accused had filed a memo for examining the said K.V.Stalline and A.Chandrasekar in order to prove the receipt dated 19.04.2012 which is said to have been executed by one S.Ganesh Kumar, Manager-cum-Power of attorney of the complainant Raama Moorthi, under which a sum of Rs.2,84,719/- appears to have been paid by the accused to the complainant. Unfortunately, the memo does not contain any of these facts and it is for the first time in the affidavit before this Court the petitioners/accused have come up with this explanation. The memo that has been filed by the petitioners/accused is so bald that one cannot expect the trial Court to allow the memo on mere asking of the party.

6. In A.G. Vs. Shiv Kumar Yadav and another, [(2015) 9 Scale 649], the Supreme Court has laid down the circumstances under which an application u/s 311 Cr.P.C. can be entertained. The memo filed by the petitioners/accused does not pass muster the law laid down therein and therefore, the trial Court was right in dismissing the memo. However, in the considered opinion of this Court, the accused deserves an opportunity in order to prove the receipt dated 19.04.2012. Admittedly, the trial Court had permitted Sivaram [A2] to be examined as D.W.2. It will be in the fitness of things if the trial Court gives an opportunity to the accused to prove the receipt dated 19.04.2012 by examining himself again. It is needless to state that the complainant will be entitled to cross examine Sivaram [A2] and

if the complainant wants to adduce any other evidence to rebut the receipt, further opportunity should be given to the complainant. The entire exercise shall be completed within one month from the date of receipt of a copy of this order.

With the above directions, this petition is closed. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.Fast Track Judge (Magistrate Level),  
Tiruppur.

+1cc to M/S.M.Guruprasad, Advocate Sr.40179

+1cc to M/S.C.Ramkumar, Advocate Sr.40600

Cr1.OP No.3395 of 2016

ctk[col]  
srg 29/07/2016

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