

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Crl.O.P.No.7578 of 2016

and

Crl.MP.No.3989 of 2016

K.Kumar

... Petitioner

Vs.

T.Thavasiappan

... Respondent

Prayer:-Criminal Original Petition is filed under Section 482 Cr.P.C., to set aside the order dated 19.01.2016 passed in Crl.M.P.No.5427 of 2015 in C.C.No.200 of 2009 on the file of the Judicial Magistrate No.I, Gobichettipalayam, Erode District.

For Petitioner : Mr.I.C.Vasudevan

ORDER

This Criminal Original Petition has been filed to set aside the impugned order passed in Crl.M.P.No.5427 of 2015 in C.C.No.200 of 2009 dated 19.01.2016 on the file of learned Judicial Magistrate No.I, Gobichettipalayam, Erode District, by dismissing the petition filed under Section 311 of Cr.P.C. for recalling PW1.

2.The respondent as a complainant filed a complaint under section 138 of Negotiable Instrument Act, stating that the petitioner has borrowed a sum of Rs.3,50,000/- on 20.01.2009 from the respondent undertaking to repay the same within a period of three months and also issued a post-date cheque for a sum of Rs.3,50,000/-. When it was presented for encashment before the State Bank of India, Gopichettipalayam, it was returned with an endorsement "stop payment" on 23.04.2009.

After issuance of statutory notice under Section 138(B) of Negotiable Instrument Act, the complaint has been filed in C.C.No.200 of 2009. When cross examination has been done, the respondent/complainant filed a petition in CrI.M.P.No.5427 of 2015 under Section 311 of Cr.P.C. for recalling P.W.1/the complainant for giving further evidence. The Trial Court after hearing both sides, has dismissed the said petition. Against which, the present Criminal Original Petition has been filed.

3.The learned counsel for the respondent would submit that to putforth a question before the complainant/PW1, recalling of P.W.1 is necessary. He would also submit that the respondent/complainant is running an unregistered chit and to that effect, he want to cross-examine P.W.1. That factum has also not been considered by the Trial Court. Hence, he prayed for setting aside the impugned order passed by the Trial Court.

4.At the time of admission, argument of the learned counsel for the petitioner is heard in length. Notice to the respondent is dispensed with.

5.On perusal of the typed set of papers, it is seen that in paragraph No.2 of the affidavit, the petitioner has stated that he has failed to post some question before P.W.1 and hence, he want to recall P.W.1. But he has not mentioned as to for what purpose he want to recall P.W.1. It is well settled dictum of the Hon'ble Apex Court that no Court shall permit the party to fill up the lacuna. So the arguments advanced by the learned counsel for the petitioner does not merit acceptance. Furthermore, it is pertinent to note that the learned Trial Judge has taken much pain and came to the correct conclusion because after P.W.1 was examined, documents were marked and the case was adjourned 15 times for cross examination of P.W.1. But, P.W.1 was not cross examined. Thereafter, the respondent/complainant approached this Court in CrI.O.P.No.24846 of 2012, wherein, a direction has been given to the trial court to dispose of the case in C.C.No.200 of 2009 within six hearings, even then, the case was adjourned for several hearings for petitioner's arguments from 22.09.2015 to 27.10.2015 i.e. Six hearings. But he has not advanced his arguments and came forward with a petition to recall P.W.1. That factum was rightly considered by the Trial Court. Therefore, the petitioner has come forward with this petition only with a view to drag on the proceedings. Hence, I do not find any reason to interfere with the order passed by the learned Judicial Magistrate No.I, Gobichettipalayam in CrI.M.P.No.5427 of 2015 in C.C.No.200 of 2009 dated 19.01.2016. Consequently, the Criminal Original Petition deserves to be dismissed and it is hereby dismissed.

6.In the result, the Criminal Original Petition is dismissed. However, the Trial Court is directed to dispose of the case in C.C.No.200 of 2009 within a period of one month from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

kkd

Sd/-
Asst.Registrar

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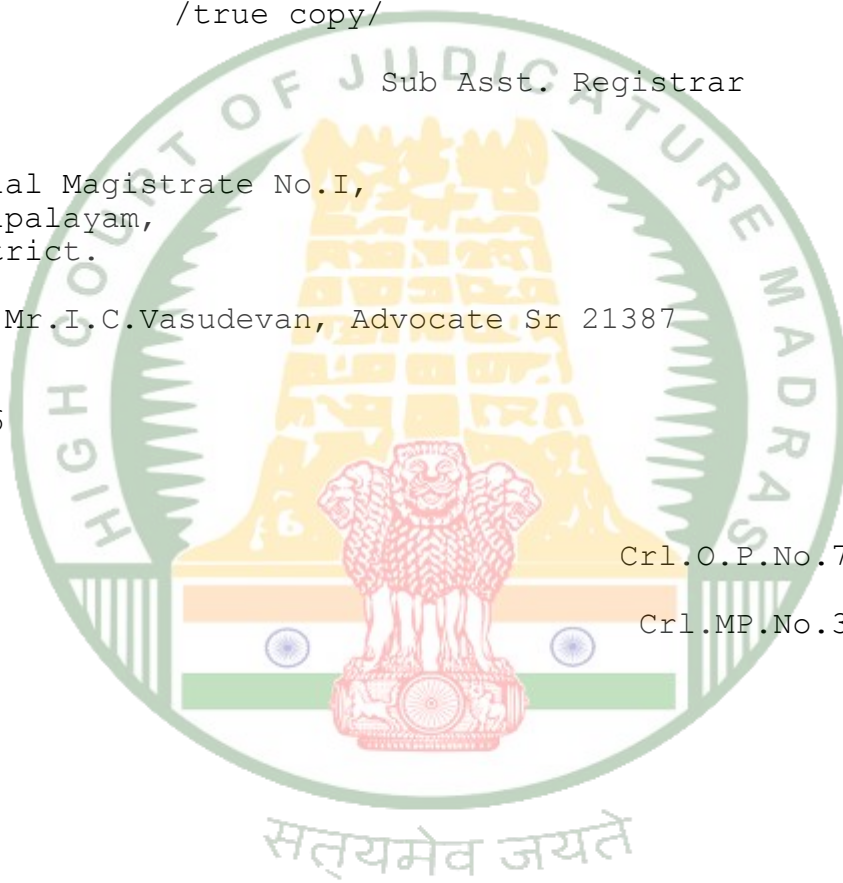
Sub Asst. Registrar

To

The Judicial Magistrate No.I,
Gobichettipalayam,
Erode District.

+ 1 cc to Mr.I.C.Vasudevan, Advocate Sr 21387

KR/13/4/16



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