

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2016

CORAM:

THE HONOURABLE MS.JUSTICE R.MALA

Crl.O.P.No.8275 of 2016

And

Crl.M.P.Nos.4310 and 4311 of 2016

Mr.Ravindra Kamath

... Petitioner

Vs.

N.Jayamurugan

Represented by his Power of Attorney Agent

P.R.Sudhakar

... Respondent

Prayer :

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to call for the records in C.C.No.11036 of 2003 on the file of the learned FTC-III, Metropolitan Magistrate, Saidapet, Chennai - 600 015 and set aside the order dated 17.03.2016 in Crl.M.P.No.1072 A of 2016.

For Petitioner : Mr.M.Murali

ORDER

The petitioner has come forward with this petition seeking to call for the records in C.C.No.11036 of 2003 on the file of the learned FTC-III, Metropolitan Magistrate, Saidapet, Chennai and to set aside the order dated 17.03.2016 made in Crl.M.P.No.1072 A of 2016.

2.The learned counsel for the petitioner would submit that because of the respondent herein as complainant filed complaint for the offence punishable under Section 138 of Negotiable Instruments Act, when P.W.1 was examined, he was not cross examined. Hence, he filed application to recall P.W.1 and that has been dismissed. He would submit that the counsel on record was not doing well. Hence, he was not able to cross examine the witness. Hence, he prayed for setting aside the impugned order.

3.At the time of admission, arguments heard in length.

4.Respondent/ complainant filed complaint under Section 200 of Cr.P.C. for the offence punishable under Section 138 of Negotiable Instruments Act stating that during the business

transaction, there was amount due of Rs.4,90,970/- and to discharge the same, the petitioner issued cheque dated 16.04.2003. It was presented for encashment and that has been returned as 'insufficient fund'. Hence, he sent a statutory notice under Section 138(b) of Negotiable Instruments Act. After receipt of notice, he has given reply but not paid the amount. Hence, complaint has been filed and after following the procedures, complaint has been taken on file. Complainant was examined as P.W.1, but not cross examined by the petitioner herein who is the accused. When the matter was posted for defence side evidence, on 30.12.2015, he filed this application for recalling P.W.1.

5. But, on a perusal of the typed set of papers would show that the chief examination has been completed on 2011. The petitioner/ accused was not presented before the Court. Even on 17.03.2016, he was not appeared. Only Sec 317 Cr.P.C petition was filed and it was allowed and the absence of the petitioner was condoned. A perusal of the order would clearly show that the Trial Court has given valid reason for dismissing the same stating that sufficient opportunity has been given. Conditional order passed on 01.12.2015 stating that cross examination of P.W.1 must be completed else suitable orders will be passed. On 01.12.2015, though complainant was present and ready, they did not cross examine. When the matter was posted for defence evidence on 22.12.2015, they did not appear and come forward with defence. When the matter was posted for conditional order on 30.12.2015 at the time only, the petitioner filed this application which shows the malafide intention of the petitioner to drag on the proceedings.

6. Hence, I do not find any reason to interfere with the order passed by the learned FTC-III, Metropolitan Magistrate, Saidapet, Chennai and it is hereby confirmed. This Criminal Original Petition is dismissed as devoid of merits. Consequently, the connected miscellaneous petitions are also closed.

pri

s/d-

Assistant Registrar (CS-VI)

True Copy

Sub-Assistant Registrar

To

1. FTC-III, Metropolitan Magistrate,
Saidapet, Chennai - 600 015.

2. The Public Prosecutor
High Court, Madras.

+ 1 cc to Mr.M.Murali, Advocate SR 24688

ca(co)
prk31/5

Crl.O.P.No.8275 of 2016

And
Crl.M.P.Nos.4310 and
4311 of 2016



WEB COPY