

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Crl.R.C. Nos.1014 & 1015 of 2017

and Crl.M.P.No.9567 of 2017

T.S.Palanisami Petitioner in both Crl.R.Cs.

Vs

Saravanan Respondent in both Crl.R.Cs.

Prayer:- These Criminal revision cases are filed under Section 397 & 401 of Cr.P.C. praying to set aside the petition and order dated 27.06.2017 passed in Crl.O.P.Nos.3073 & 3080 of 2017 in STC No.1019 of 2001 on the file of the Judicial Magistrate, No.1, Gobichettipalayam.

For petitioner : Mr.M.V.Krishnan

For Respondent : Mr.Santhanamari
for Mr.C.J.Ayyappan

C O M M O N O R D E R

These Revision Cases have been filed against the order passed by the learned Judicial Magistrate No.1, Gobichettipalayam in Crl.M.P.No.3073 and 3080 of 2017 dated 27.06.2017.

2. The very short facts which are required to be noticed for the disposal of these two criminal revision cases are as follows:

3. The petitioner/accused is facing trial before the trial Court for the alleged offence punishable under Section 138 of the Negotiable Instrument Act.

4. The case of the petitioner is that in response to the statutory notice issued by the respondent/complainant, the petitioner/accused had given reply. The same had not been filed as one of the documents along with the complaint filed by the respondent. However, he has admitted in his complaint that the petitioner/accused had given such reply.

5. It is the further case of the petitioner that, however, at the time of deposition before the trial Court, the complainant/PW1 during cross examination, has stated that he did not receive any reply from the petitioner/accused.

6. Subsequently, the cross examination of witness in so far as PW1 was over. It is also the case of the petitioner that since the reply notice had already been given by the petitioner/accused to the respondent/complainant, though the said fact had been admitted in the complaint, which has not been controverted by the complainant PW1 during cross examination, in order to prove that a reply notice has been sent by the petitioner/accused, two petitions had been filed before the trial Court. One is to re-open the evidence of the prosecution side and another one is to re-call the said PW1.

7. Considering the said two petitions, the trial Court, by the common impugned order dated 27.06.2017, has rejected the plea of the petitioner/accused, as against which these two revision cases have been filed.

8. I have heard Mr.M.V.Krishnan, learned counsel for the petitioner as well as Mr.Santhanamari, learned counsel for the respondent.

9. The sum and substance of the argument advanced by the learned counsel for the petitioner is that, since the complainant himself admitted that the said reply notice had been sent by the petitioner/accused at the time of filing the complaint, and the said fact has not been controverted at the time of deposition, in order to prove the case of the petitioner/accused, it became necessary to re-open and re-call the evidence of PW1 and only in that context, the said two petitions have been filed.

10. However, the learned counsel appearing for the respondent would state that the learned Judge, after having considered the said plea made by the petitioner/accused, had rejected the same through the impugned order by observing that, if at all the petitioner/accused is willing to mark the said document i.e. reply notice said to have been sent by the petitioner/accused, the same can be made by examining himself. Only in that context the said petitions have been dismissed and therefore, the order impugned does not require interference by this Court.

11. I have heard the said submissions made by the learned counsel on either side. I have also perused the impugned order, whereby the learned trial Judge has given the reason that the examination of witness on the side of the prosecution/PW1 was completed and twice had been cross-examined.

12. The trial Court would also state in the impugned order that, if at all the petitioner/accused wants to mark the said document i.e. copy of reply notice sent by him, he can do so by examining himself as one of the witness on the defence side.

13. I have considered the said reasoning given by the learned Judge through the impugned order. As has been rightly pointed out by the learned Magistrate, if at all the petitioner/accused feels that the said document should be marked as one of the documents on the side of the petitioner/accused, he can very well do so, by examining himself, and in this regard, if he produced the same before the Court, there can be no impediment for the Court to accept the same, as the said position has been indicated in the impugned order itself. In view of the said fact, this Court is of the view that there is no infirmity or illegality in the order passed by the trial Court which is impugned herein. Accordingly the order is sustained and the revision cases fail and they are dismissed. However, it is open to the petitioner to make an application, if he is so advised, to examine himself as one of the witnesses on the defence side for the purpose of marking the said document of reply notice or for other evidences and if such an application is filed by the petitioner, it shall be considered and he may be permitted to examine himself by the trial Court.

14. With these observations, these revision cases are dismissed. Consequently, connected miscellaneous petition is also dismissed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

rsi

To

The Judicial Magistrate, No.1,
Gobichettipalayam.

+1 CC to Mr.C.J.Ayyappan, Advocate Sr.No.69171

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RSY(CO)
KP(21.11.2017)