

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 07.06.2017
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Crl.O.P.No.7427 of 2017
and
Crl.M.P.No.5365 of 2017

T.M.Murugan

[Petitioner]

Vs

S.A.Ramu

[Respondent]

Petition filed under Section 482 of the Criminal Procedure Code, to set aside the order dated 20.09.2016 passed in Crl.R.P.No.21 of 2016 on the file of the II Additional Sessions Judge, Erode, confirming the order dated 09.03.2016 passed in Crl.M.P.No.647 of 2016 in C.C.No.681 of 2009 on the file of the Judicial Magistrate No.1, Erode.

For Petitioner : Mr.R.Ezhilarasan
For Respondent : C.Emalias Additional
Public Prosecutor

O R D E R

It is stated by the petitioner that the respondent herein had filed a private complaint in C.C.No.681 of 2009 on the file of the Judicial Magistrate No.1, Erode for the alleged offences punishable under Section 138 of the Negotiable Instruments Act. For recording the evidence on the side of the defence, the case was posted for production of the 2nd witness, for which summons was also ordered. But the Trial Court closed the evidence on the side of the defence, without giving any opportunity to the petitioner, on the ground that process fee was not paid. Hence the petitioner filed a petition to reopen the defence side evidence in Crl.M.P.No.647 of 2016 which was dismissed on 09.03.2016. Challenging the same, the petitioner filed a Criminal Revision Case in Crl.RC.No.21 of 2016 before the II Additional Sessions Judge, Erode, which was also dismissed, on 20.09.2016. Hence this Criminal Original Petition.

2.When this Criminal Original Petition was posted on 05.06.2017, there was no representation on behalf of the petitioner and hence it was adjourned today.

3.The main ground raised in this Criminal Original Petition, when the process fee is paid and only the cover and acknowledgement were not produced, the Trial Court has erred in closing the defence side evidence, as it is only a clerical error. Further, it is stated that granting one more opportunity to the petitioner would not affect the case of the respondent.

4.It is seen from the order dated 09.03.2016 passed by the Trial Court, that the petitioner herein did not adduce any steps to bring the witnesses by effecting payment of process fee for summons as well as witness warrant. Since the petitioner did not utilised the rights available to him at the earliest point of time and also in view of forfeiture of the right of the accused in examining the said witnesses on his part, the Trial Court dismissed the petition on the ground that the same lacks merit. The Lower Appellate Court has stated in its order dated 20.09.2016 that the petitioner intended to examine one Rajmohan as D.W.2 and also the Manager of ICICI Bank as a witness; he has not paid the process fee for issue of summons to Rajmohan and also did not pay the process fee for issuance of witness warrant for securing the Manager of ICICI Bank. It has been categorically observed that there was no acceptable reason for the failure to pay the process fee for issuance of witness summons and warrant to Rajmohan and Manager of ICICI Bank. This Court is not inclined to interfere with the said factual findings of the Courts below and accordingly, this Criminal Original Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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To

1.The Judicial Magistrate No.1, Erode.

2.The II Additional Sessions Judge, Erode.

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3.The Additional Public Prosecutor,
Madras High Court, Chennai-600 104.

CrI.O.P.No.7427 of 2017
and
CrI.M.P.No.5365 of 2017

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