

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2017

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P.No.6580 of 2010

and

M.P.No.1 of 2010

1.M/s.Viltrnica Technology Pvt. Ltd.,
rep. by Mr.Rajagopalan,
Managing Director.

2.G.Rajagopalan ..Petitioners

vs.

Jitendra Kumar
Propr. M/s.J.M.Jain,
No.28, Nammalwar Street,
Chennai - 600 079.

..Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., against the order dated 12.01.2009 passed in M.P.No.899 of 2008 in C.C.No.12820 of 2004, on the file of the VIII Metropolitan Magistrate Court, George Town.

For Petitioners: Mr.T.Mathi

For Respondent : No Appearance

JUDGMENT

The petitioners herein are the accused facing a private complaint under Section 200 of Cr.P.C. lodged by the respondent/complainant for an offence punishable under section 138 of Negotiable Instruments Act.

2.The sum and substance of the Instant Criminal Original Petition as follows:

According to respondent/complainant the 2nd petitioner herein while acting as the Managing Director of the 1st petitioner company namely Viltra Nica Technology Private Ltd. had, for and behalf of the company, borrowed a loan for a sum of Rs.2,04,000/- (Two Lakhs Four Hundred and Thousand Rupees Only) on 18.06.2003 by way of cheque.

3.The said amount was arranged by the complainant from various financiers. Whereas the above said amount went due and there was no payment made by the petitioner as promised. When a demand was made the petitioners issued a subject cheque No: 482118 on 31.08.2004 for a sum of Rs.2,27,270/- (Two Lakhs Twenty Seven Thousand Two Hundred and Seventy Rupees only) towards the above loan instructing the complainant to encash the same. But when the said cheque was presented for encashment as per the direction of the petitioners, it came to be returned. Hence the above complaint was filed by him. The respondents/petitioners herein entered appearance and 2nd petitioner herein was questioned under 313 Cr.P.C. in the year 2006. In the said circumstance the petitioners filed an application under Section 311 of Cr.P.C. in M.P No.899 of 2008 to recall PW-1.

4.At this juncture, it is noticed that previously the petitioner has filed an application Under Section 311 of Cr.P.C. to examine the defense witness and the same was allowed by the trial court. However as on the said date i.e., on 15.12.2008 though the defense witness on the way from Hyderabad was present the petitioner/accused counsel had not examined the witness. Accordingly the witness of defense side was closed and the case was then posted for arguments.

5.In the said factual background, the petitioner had filed the above application in M.P.No.899 of 2008 under Section 311 of Cr.P.C. to recall and reopen the PW1.

6.According to the learned counsel for the petitioner the said application was dismissed on misappraisal of facts and law and the said Order is under challenge in this Criminal Original Petition.

7.I heard Mr.T.Mathi, learned counsel for the petitioner and there was no representation for the respondent and perused the entire materials available on record.

8.On perusal of the Impugned order this court finds that sole reason assigned by the Learned Judge while dismissing the petitioner's application on 15.12.2008 is that though the defense witness on the way from Hyderabad was present the petitioner's counsel failed to examine the witness.

9.In my considered opinion such a rigid view cannot be followed in criminal trial, that too when the onus to prove innocence is casted upon the accused. Admittedly the trial on hand is being the one for an offence under Negotiable Instruments Act.

10.It is needless to say that it is for the accused to successfully rebut the presumptions to be drawn in favour of the complainant under Negotiable Instruments Act.

11.In the said circumstance and on considering the scope of trial, I am on the opinion that in the interest of justice, the petitioner can be given one more chance to recall PW1 to cross examine the witness.

12.In the result, this Criminal Original Petition is allowed by setting aside the order in M.P.No.899 of 2008 in C.C.No.12820 of 2004 on the file of the learned VIII Metropolitan Magistrate Court, George Town, on condition that the petitioner shall pay a sum of Rs.1,000/- to the Tamil Nadu State Legal Aid Services Authority, attached to the Madras High Court, Chennai - 104, within a period of two weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Depety Registrar(CS)

//True Copy//

Sub Assistant Registrar

vs

To

The VIII Metropolitan Magistrate Court,
George Town, Chennai.

Copy to:1. This Section Officer,
Accounts Section, High Court, Madras.

2. The Secretary,
Tamil Nadu State Legal Aid Services Authority,
High Court, Madras

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(CO)
EU(31/10/2018)