

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2017

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Crl.O.P.No.26060 of 2011
and
MP.No.1 of 2011

J.Sekar .. Petitioner
Vs
L.Jaganathan .. Respondent

Petition filed under Section 482 of the Criminal Procedure Code, to set aside the order passed by the learned Judicial Magistrate No.IV, Vellore, Vellore District in Crl.MP.No.4248 of 2011 in CC No.184 of 2009 dated 20.09.2011.

For Petitioner : Mr.E.Kannadasan

For Respondent : Notice served, no appearance

ORDER

Challenging the order dated 20.09.2011 passed by the learned Judicial Magistrate No.IV, Vellore, Vellore District in Crl.MP.No.4248 of 2011, the present Criminal Original Petition came to be filed by the complainant.

2. It is the case of the petitioner that he has lodged a private complaint against the respondent herein for the offence punishable under Section 138 r/w 142 of the Negotiable Instruments Act, 1881 as Amended Act 65 of 2002 and the same was taken on file as CC No.184 of 2009 by the learned Judicial Magistrate No.IV, Vellore. Thereafter, the petitioner was examined as PW.1 and he was cross examined by the respondent. During the course of cross examination, the respondent marked the pro-note as Ex.D6 stating that the consideration of the cheque amount was paid in the presence of the witnesses by names V.M.Murthy and J.Palani, however, who were not examined as witnesses. Hence, the petitioner filed a petition in CMP.No.4248 of 2011 under Section 311 Cr.P.C seeking permission to examine those witnesses. However, the said petition was dismissed by order dated 20.09.2011, stating that the same was only an after thought to fill up the lacunae. Aggrieved over the said dismissal order, the petitioner has come up with the present petition.

3. Learned counsel for the petitioner submitted that there is no wilful intention on the part of the petitioner to drag on the proceedings and he has filed the said Section 311 Cr.P.C petition only to prove passing of consideration. Therefore, he prayed for setting aside the order passed by the trial court in dismissing the said petition.

4. Despite service of notice and the name of the respondent having been printed in the cause list, none appears for the respondent.

5. Considering the facts and circumstances of the case and taking note of the fact that the petitioner, in order to prove the passing of consideration, wants to examine the witnesses to Ex.D6, this Court is inclined to grant an opportunity to the petitioner to examine those witnesses.

6. Accordingly, this Criminal Original Petition is allowed by setting aside the order dated 20.09.2011 passed by the learned Judicial Magistrate No.IV, Vellore, Vellore District in CMP.No.4248 of 2011 in CC No.184 of 2009. The petitioner is permitted to examine the witnesses to Ex.D6 viz., (i)V.M.Murthy S/o.Munusamy Achari and (ii)J.Palani S/o.Janardhan, on 27.02.2017. However, it is made clear that no further adjournment shall be granted to the petitioner. Consequently, connected Miscellaneous Petition is closed.

sd/

Assistant Registrar(CS VI)

/true copy/

Sub Assistant Registrar

rk

To

The Judicial Magistrate No.IV, Vellore, Vellore District.

+1cc to Mr.E.Kannadasan,Advocate SR.No.9243

Cr1.O.P.No.26060 of 2011

KK(CO)
GN(17/02/2017)