

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2017

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THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Crl.O.P.NO.13143 of 2010
and M.P.No.1 of 2010

C.Govindarajulu ... Petitioner

Vs.

Ravichandran

.... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 30.04.2010 passed by the learned Additional District Judge-cum-Fast Track Court No.II, Coimbatore in C.R.P.No.65 of 2009 partly reversing the order dated 20.11.2009 passed by the learned Judicial Magistrate, No.VII, Coimbatore in C.M.P.No.6213 of 2009 in S.T.C.No.2879 of 2007.

For Petitioners: Mr.M.N.Balakrishnan

For Respondent : Mr.N.Elumalai for M/S.Pothiraj

O R D E R

The petitioner has come forward with this Criminal Original Petition to quash the order dated 30.04.2010 passed by the learned Additional District Judge, Fast Track Court No.II, Coimbatore in C.R.P.No.65 of 2009, partly reversing the order dated 20.11.2009 passed by the learned Judicial Magistrate, No.VII, Coimbatore in C.M.P.No.6213 of 2009 in S.T.C.No.2879 of 2007.

2. The respondent/complainant has filed a private complaint under Section 138 of the Negotiable Instruments Act in S.T.C.No.2879 of 2007 against the petitioner before the learned Judicial Magistrate, No.VII, Coimbatore, for dishonour of cheque bearing No.907730 dated 15.05.2007 for a sum of Rs.3,00,000/-. On the side of the respondent/complainant, 6 witnesses were examined and after the closure of the evidence of respondent/defacto complainant, the petitioner herein was examined in terms of Section 313 Cr.P.C. Thereafter, the petitioner has examined his witnesses and his evidence was closed on 26.10.2009 and the matter was posted for arguments on

06.11.2009. On the said date, Petition under Section 311 of Cr.P.C. in CMP.No.6213 of 2009 was filed by the petitioner, to recall P.W.1 and D.W.5. According to the petitioner, P.W.1 in his evidence has stated that he had borrowed money from a private financial institution and therefore it is necessary to cross examine him as to the persons from whom he borrowed money to pay to the petitioner. The learned Magistrate, having come to the conclusion that the petition has been filed only to drag on the proceedings, dismissed the same by an order dated 20.11.2009. Aggrieved by the said order of dismissal, the petitioner preferred a revision petition in C.R.P.No.65 of 2009 on the file of the Additional District Judge, Fast Track Court No.II, Coimbatore, who has partly allowed the revision by order dated 30.04.2010. The Additional District Judge, while rejecting the prayer for recalling P.W.1, permitted the petitioner to recall D.W.5. Aggrieved over the said order dated 30.04.2010, the petitioner has filed the present Criminal Original Petition.

3. The learned counsel for the petitioner would submit that P.W.1 is a total stranger to the petitioner, that P.W.1, in his evidence has stated that he had borrowed money from a private financial institution and paid to the petitioner and therefore, it is just and necessary to cross examine P.W.1 to find out who are all the persons running the said private financial institution.

4. On the other hand, learned counsel appearing for the respondent/complainant would submit that the case is of the year 2007 and the petitioner has been filing petition after petition only to delay the proceedings. It is his contention that the evidence on the side of the complainant was closed as early as in 2007, the present petition has been filed in the year 2009, that P.W.1 has already been cross examined at length and the present miscellaneous petition has been filed only to drag on the proceedings and hence the order of the revisional authority is sustainable and the Criminal Original Petition is liable to be dismissed.

5. Heard the learned counsel on either side and perused the materials available on record.

6. The case is of the year 2009 and it is under Section 138 of the Negotiable Instruments Act. The present petition was filed to recall P.W.1, after the examination of witnesses on both sides and after the case was posted for arguments. It is not explained by the petitioner as to why petition for recalling P.W.1 was not filed immediately after examination of defence witness. It has not been established that further examination of D.W.5 is absolutely necessary to come to a just conclusion.

Under these circumstances, it cannot be stated that the Courts below were wrong in coming to the conclusion that the petition to recall P.W.1 was filed only to drag on the proceedings. This Court does not find any valid reason to come to a different conclusion.

7. For the reasons stated above, the Criminal Original Petition deserves to be dismissed and the same is dismissed. Connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Judge
Fast Track Court No.II, Coimbatore
2. The Judicial Magistrate, No.VII, Coimbatore
- 3.The Public Prosecutor, Madras High Court, Madras.

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