



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.04.2017

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl. O.P. (MD) No.4305 of 2017

and

Crl. M.P. (MD) No.3099 of 2017

M.K.M. Mohammed Shaffi
Proprietor
M/s. Shifa Property Developers
through his Power of Attorney
M. Abdul Kareem
S/o S.M. Mohamed Kani
No.82, Middle Street
Kailasapuram
Tirunelveli Junction

Petitioner

vs.

N.M. Sukumaran

Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., seeking to call for the records pertaining to the order passed in Crl.M.P. No.4854 of 2016 in S.T.C. No.2918 of 2009 on the file of the Judicial Magistrate Court No.IV, Tirunelveli dated 10.01.2017 and set aside the same in the interest of justice.

For petitioner

Mr. T. Selvan

ORDER

This Criminal Original Petition has been preferred seeking to call for the records pertaining to the order dated 10.01.2017 passed in Crl.M.P.No.4854 of 2016 in S.T.C. No.2918 of 2009 on the file of the Judicial Magistrate Court No.IV, Tirunelveli and set aside the same.

2 For the sake of convenience, the petitioner and respondent will be referred to as the complainant and accused respectively.

3 It is the case of the complainant that he is into real estate business and was in look out for vacant lands for his business purpose. While so, the accused, an advocate by profession, told him that 38.16 acres of land near Government



Engineering College, Tirunelveli, belonging to a registered society, is available for sale and that he would get the complainant the said land. The accused introduced some persons claiming to be the office bearers of the society and received a sum of Rs.58.75 lakhs as advance from the complainant for the sale of the said land and an agreement dated 19.02.2008 was also entered into between the complainant and the accused. Further enquiry conducted by the complainant revealed that the said society was not the actual owner of the land in question and that the property had already been alienated. Therefore, the complainant called upon the accused to return the sum of Rs.58.75 lakhs. The accused agreed to return the money and paid part amount of Rs.27.75 lakhs by cheque bearing no.639025 dated 24.07.2008, which, when presented by the complainant was returned unpaid. Hence, the complainant issued a statutory notice dated 05.01.2009 to the accused and thereafter, launched the present prosecution in S.T.C. No.2918 of 2009 which is now pending on the file of the Judicial Magistrate Court No.IV, Tirunelveli, for an offence under Section 138 of the Negotiable Instruments Act, 1881, against the accused.

4 After the evidence on the complainant's side was completed and after the accused was questioned under Section 313, Cr.P.C., the case was posted for arguments. At that juncture, the complainant filed a petition in Crl.M.P. No.4854 of 2016 in S.T.C. No.2918 of 2009 under Section 311, Cr.P.C. on 03.10.2016 for examining his Accountant and also for marking the account ledger. The accused objected to the petition by filing a counter affidavit. The Trial Court dismissed Crl.M.P. No.4854 of 2016 on 10.01.2017, challenging which, the complainant is before this Court.

5 It is true that a petition under Section 311, Cr.P.C. can be filed at any time before the judgment is delivered by the Trial Court, if it is shown to the Court that the evidence that is sought to be adduced is required for the just decision of the case. In this case, the petition filed in Crl.M.P. No.4854 of 2016 under Section 311, Cr.P.C., does not contain any averment as to how the evidence that is required to be adduced would serve the interest of justice. To appreciate this, it may be necessary to extract verbatim the averments in the petition filed by the complainant in Crl.M.P. No.4854 of 2016:

"2. The petitioner/complainant noticed that it was unable to file a document through additional witness on oversight during the course of trial.

<https://hcservices.ecourts.gov.in/hcservices/> It is just and necessary in the interest of justice to produce the documents through additional witness to prove the



petitioner/complainant's case u/s 138 N.I. Act.

4. The non production of the document which was misplaced and thereby the petitioner/complainant has not able to produce before the Hon'ble Court due to oversight.

5. Hence, the above case is reopened for enquiry in order to arrive just decision of the case by this Hon'ble Court."

6 In the order under assail, the Trial Court has noted that the complainant was examined on 24.01.2013 and was cross-examined on 05.07.2014 by the accused. Thereafter, the case was being repeatedly adjourned for two years on various dates for production of further witness on behalf of the complainant. Ultimately, on 25.04.2016, the complainant's evidence was closed and the accused was examined under Section 313, Cr.P.C. on 02.05.2016 and the case was adjourned for evidence on behalf of the accused to 02.09.2016. On that day, the defence closed their evidence and the case was posted for arguments to 23.05.2016, 25.05.2016, 27.05.2016, 31.05.2016, 13.06.2016, 27.06.2016, 11.07.2016, 18.07.2016, 20.07.2016, 28.07.2016, 19.08.2016, 02.09.2016, 12.09.2016, 19.09.2016, 26.09.2016 and 03.10.2016. On 03.10.2016, the complainant has filed the petition under Section 311, Cr.P.C. bereft of even the minimum required averments for the Trial Court to exercise its power under Section 311, Cr.P.C.

7 In view of the above discussion, this Court does not find any infirmity in the order passed by the Trial Court warranting interference.

In the result, this Criminal Original Petition is dismissed as being devoid of merits. Connected CrI.M.P. is closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

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To:

- 1 The Judicial Magistrate No.IV, Tirunelveli
- 2 The Additional Public Prosecutor
Madurai Bench of Madras High Court, Madurai