



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 28.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.O.P. (MD) No.7955 of 2017

and

Crl.M.P. (MD) Nos.5412 and 5413 of 2017

Karthikeyan : Petitioner/Respondent/Accused

-Vs-

Rajeshkannan,
Represented through his power of
attorney holder,
Manmathan

: Respondent/Petitioner/Complainant

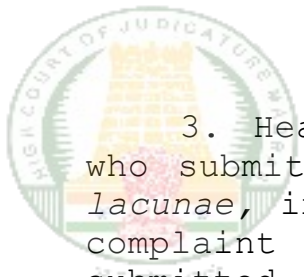
PRAYER: Petition is filed under Section 482 of the Criminal Procedure Code to set aside the order passed by the learned Judicial Magistrate, Theni, in Cr.M.P.No.322 of 2017, dated 09.05.2017 in S.T.C.No.137 of 2015 and allow this petition.

For Petitioner : Mr.M.Subash Babu

O R D E R

For the sake of convenience, the parties will be referred to by their name.

2. Rajeshkannan engaged the services of Karthikeyan, a building contractor, for renovation of his house and entered into an agreement. There was delay in completing the renovation work though Rajeshkannan had paid some amounts to Karthikeyan. When the dispute arose between Rajeshkannan and Karthikeyan, Karthikeyan is said to have given a cheque dated 22.07.2015 for Rs.3,65,000/-, in the name of Rajeshkannan. The said cheque was dishonoured and, therefore, Rajeshkannan issued a statutory notice and, thereafter, has filed a prosecution in S.T.C.No.137 of 2015 before the learned Judicial Magistrate, Theni, under Section 138 of the Negotiable Instruments Act against Karthikeyan. Rajeshkannan is abroad and, therefore, he had appointed one Manmathan as his power of attorney to file the complaint. During trial, on behalf of the complainant, a petition in Cr.M.P.No.322 of 2017 in S.T.C.No.137 of 2015 was filed under Section 311 of the Code of Criminal Procedure for the purpose of examination of Edhaya, Wife of Rajeshkannan, on the ground that she was taking care of the construction work in the absence of Rajeshkannan and, therefore, she knows the facts of the case well. Karthikeyan objected to the said petition. The Trial Court allowed Cr.M.P.No.322 of 2017 on 09.05.2017, challenging which, Karthikeyan is before this Court.



3. Heard Mr.M.Subash Babu, learned counsel for Karthikeyan, who submitted that Edhaya is being examined only to fill up the lacunae, inasmuch as the name of Edhaya is not referred to in the complaint that has been filed by Rajeshkannan. Therefore, he submitted that the Trial Court should not have allowed the petition.

4. This Court gave its anxious consideration to the submissions made by Mr.M.Subash Babu, learned counsel for Karthikeyan.

5. While dealing with such cases, this Court should bear in mind the provisions of Section 114 of the Indian Evidence Act, which says that the Court may presume existence of certain facts taking into consideration the common course of natural events, human conduct and public and private business.

6. In this case, Edhaya is not a stranger. She is admittedly the wife of Rajeshkannan. Rajeshkannan is abroad. Karthikeyan was entrusted work to do renovation of the house of Rajeshkannan. Therefore, dictates of common sense tells that Edhaya would have been supervising and monitoring the renovation work of the house while Rajeshkannan himself has been sending the money from abroad. Therefore, the contention that Edhaya does not know anything about the case and, therefore, she is incompetent to give evidence cannot be countenanced. Non-mentioning of Edhaya's name in the complaint cannot be a reason to say that she cannot be examined as a witness. The accused has got the right to cross-examine and impeach her testimony. Therefore, this Court does not find any serious infirmity in the order passed by the Trial Court warranting interference.

7. In the result, this Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petitions are closed.

8. However, Mr.M.Subash Babu, learned counsel sought permission of this Court to dispense with the personal appearance of Karthikeyan before the Trial Court.

9. Accepting the submission, Karthikeyan is directed to appear before the Trial Court and furnish a bond under Section 88 of the Code of Criminal Procedure for Rs.5,000/- (Rupees Five Thousand only) without sureties within two weeks from the date of receipt of a copy of this order and thereafter, give an undertaking that his counsel will cross-examine the prosecution witnesses on the day they are examined in chief in his absence without taking adjournment and on such undertaking, his presence may be dispensed with and he shall be present before the Trial Court for questioning under Section 313 Cr.P.C. and on the day of judgment.

Sd /-

ASSISTANT REGISTRAR

/TRUE COPY/



To

The Judicial Magistrate,
Theni.

+1 CC TO MR.M.SUBASH BABU, ADVOCATE, SR NO.62534

SML

MAS/MR-KKR/SAR1:17.07.2017:2P-3C

Order made in
CRL.O.P. (MD) No.7955 of 2017
28.06.2017