

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 30.10.2018

CORAM
THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.6233 of 2016

S.Somasundaram,
S/o.Sri. Shanmugam,
No.103, Main Road,
Ukkadu, Thenparai,
Thirumakkottai,
Thiruvarur District.

....Petitioner/Defacto Complainant

Vs.

1.The State

Rep by Inspector of Police.
Thirumakkottai Police Station,
Thiruvarur District.

.... 1st Respondent/Petitioner

2.Mr.S.Avani,

S/o.Sri. Shanmugam,
Ukkadu, Thenparai,
Thirumakkottai,
Thiruvarur District.

....2ndRespondent/Respondent/Accused

PRAYER : This Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 04.03.2016 passed by the Judicial Magistrate No.2, Mannargudi, Thiruvarur District Crl.M.P.No.5105/2015 in C.C.No.236/2016 for the offences u/s.420,418 and 506(i) IPC dismissing the petition to re-open evidence of PW-7 and recall the PW-7 Mr.Sankaran the then Branch Manager, City Union Bank, Thirumakkottai, Thiruvarur.

For Petitioner : Mr.J.Raj Mohan

For R1 : Mr.T.Shunmugarajeswaran,
Government Advocate (Crl.Side)

For R2 : No Appearance

O R D E R

This Criminal Original petition has been filed by the defacto-complainant to set aside the order passed by the Judicial Magistrate No.II, Mannargudi, Thiruvarur District in Crl.M.P.No.5105/2015 in C.C.No.236/2016 dated 04.03.2016.

2. The learned counsel for the petitioner has submitted that based on the complaint given by the petitioner, the first respondent has registered a case against the second respondent in Crime No.66 of 2009 under Sections 420, 418 of IPC and altered to 418, 420 and 506(i) of IPC and after investigation, he has filed a charge sheet under the aforesaid provisions and based on the same, the learned Judicial Magistrate-II, Mannargudi, Thiruvarur District, has taken a case on file in C.C.No.236/2016 and tried the case. He further submitted that during trial, on the side of the prosecution, one Mr.Sankaran, Manager of City Union Bank, Thirumakkottai, branch was examined as PW-7. He further submitted that, at the time of examining the said witness, inadvertently the fixed deposit receipt, which stands in the name of the accused omitted to mark. However it was marked as Ex-P-27, through investigation officer (PW-9). He further submitted that after closing of the prosecution side evidence, the case was posted for questioning under Section 313 Cr.P.C and at that stage only, the petitioner came to know that the said fixed deposit receipt was not marked through PW-7 and hence, he made a request to the learned Assistant Public Prosecutor to file a petition to recall PW-7, and examine further and accordingly, the learned Assistant Public Prosecutor has filed an application under Section 311 Cr.P.C. in CrI.MP.5105 of 2015 to recall PW-7.

3. He further submitted that the learned Judicial Magistrate, without considering the contention of the learned Assistant Public Prosecutor, has mechanically dismissed the said petition. He further submitted that since the first respondent has not taken any steps to challenge the said order, the petitioner being aggrieved person, has filed the present petition. He further submitted that in view of the decision of Hon'ble Supreme Court in Ratanlal v. Prahlad Jat and others (CrI.A.No.499 of 2014 dated 15.09.2017), the petitioner is entitled to challenge the order passed by the learned Judicial Magistrate under Section 482 Cr.P.C. He further submitted that unless the order passed by the learned Judicial Magistrate is set aside and an opportunity is given to the prosecution for recalling the PW-7 and elicit the facts with regard to the fixed deposit receipt, the petitioner will put to irrecoverable loss and injuries and hence he requests to set aside the order passed by the Judicial Magistrate and allow the application in CrI.M.P.No. 5105 of 2015.

4. The learned Government Advocate (CrI.Side) who is appearing for the first respondent has not raised any objection for the reason that before the trial Court, it was only the first respondent, who filed the petition to recall the PW-7.

5. Though notice was served on the second respondent / accused, he has not appeared either in person or through counsel

and hence after hearing the arguments on the side of the petitioner and first respondent and perusing the records, order is being passed.

6. In Ratanlal v. Prahlad Jat and others (supra) Hon'ble Supreme Court has held that Criminal trial is conducted largely by following the procedure laid down in Cr.P.C. and that the locus standi of the complaint is a concept foreign to criminal jurisprudence. It further held that anyone can set the criminal law in motion except where the statute enacting or creating an offence indicates to the contrary. It also held that the said general principle is founded on a policy that an offence, that is an act or omission made punishable by any law for the time being in force, is not merely an offence committed in relation to the person who suffers harm but it is also an offence against the society and therefore, in respect of such offences which are treated against the society, it becomes the duty of the State to punish the offender. In this case though the state has filed petition to recall PW-7 and after dismissal of the said petition by the trial Court, the State has not taken any steps to challenge the said order. Under the said circumstances, this Court is of the view that the petitioner being the defacto-complainant is entitled to file the present petition.

7. Now let us see whether the order passed by the trial Court is suffering from any infirmities warranting this Court to interfere in the said order, in the petition filed in CrI.M.P.No.5105 of 2015 before the trial Court, it is stated as follows:-

"2. It is submitted that the prosecuting side evidence to be reopened for the purpose of recall the PW7 namely Mr.Sankaran, who worked as a Branch Manager in City Union Bank, Thirumakottai at the time of occurrence. This witness is a valuable and material witness his evidence appears to be essential the just decision of this case before this Hon'ble court. Hence, the petition for reopen the prosecution side evidence and to recall the PW-7 namely Mr.Sankaran.

It is therefore prayed that this Hon'ble Court may be pleased to pass an order to reopen the prosecution side evidence and pass an order to recall the PW7 namely Mr.Sankaran and the Hon'ble Court may issue summon to the PW-7 namely Mr.Sankaran, and allow this petition and thus render justice."

8. From the reading of the aforesaid averments, it is clear that the learned Assistant Public Prosecutor has not

stated any reason for recalling the PW-1 for further examination. On the contrary, he has stated that PW-7 is a valuable and material witness and his evidence is essential for just decision of the case. Since already the learned Assistant Public Prosecutor felt that the said witness is a material witness, he chosen to examine the said witness as PW-7. But for recalling the said witness, he has not stated any reason. The learned Judicial Magistrate also taken in to consideration of the aforesaid facts and rightly dismissed the said petition. This Court does not find any reason to interfere in the said order. Hence, this petition is liable to be dismissed.

9.In the result, this Criminal Original Petition is dismissed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

stm

To

- 1.The Judicial Magistrate,
No.2, Mannargudi,
Thiruvarur District
- 2.The Inspector of Police,
Thirumakkottai Police Station,
Thiruvarur District.
- 3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.J.Rajamohan, Advocate, S.R.No.74742

Cr1.O.P.No.6233 of 2016

RSV(CO)

rrs 15/02/2019

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