

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

Crl.O.P.No.9972 of 2018
and
Crl.M.P.No.5107 of 2018

1.M/s.Thirrupathi Brothers,
No.16, Lamech Street,
Janaki Nagar,
Valasaravakkam,
Chennai 87.

2.N.Subash Chandra Bose

3.N.Lingusamy

...Petitioners/Accused

versus

Rajendra Kumar

...Respondent/Complainant

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code to call for the records and set aside the order dated 13.03.2018 in Crl.M.P.No.1081 of 2018 in C.C.No.1841 of 2016 on the file of the Metropolitan Magistrate Court (Fast Track Court - IV), George Town, Chennai -1 and allow Crl.M.P.No.1081 of 2018.

For Petitioners : Mr.D.Prabhu Mukunth Arunkumar

ORDER

This Criminal Original Petition has been filed to call for the records and set aside the order dated 13.03.2018 passed in CrI.M.P.No.1081 of 2018 in C.C.No.1841 of 2016 on the file of the Metropolitan Magistrate Court, (Fast Track Court - IV), George Town, Chennai.

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

3. The complainant initiated a prosecution in C.C.No.1841 of 2016 under Section 138 of the Negotiable Instruments Act, 1881 against the accused and the same is pending on the file of the Metropolitan Magistrate, Fast Track Court - IV, George Town, Chennai. The complainant was examined as witness and he was cross-examined by the accused. The accused were questioned under Section 313 Cr.P.C and their answers were recorded by the trial Court. Thereafter, the trial Court had given sufficient time to the accused to examine the defence witness on his part. Ultimately, since the accused did not come forward to examine any defence side witness despite time being given by the trial Court, the witness of the defence side was closed by

the trial Court *suo motu* on 22.01.2018 and the case was posted for arguments on 06.02.2018. On 06.02.2018, the accused filed Crl.M.P.No.1081 of 2018 in C.C.No.1841 of 2016 for examining the defence witnesses and for reopening the case and the same was dismissed by the trial Court on 13.03.2018, challenging which, the accused are before this Court.

4. Heard the learned counsel for the accused and perused the impugned order.

5. In the petition filed in Crl.M.P.No.1081 of 2018 by the accused, they have not stated as to why they did not examine the defence witnesses. Therefore, the trial Court was right in dismissing the application by relying on the decision in A.G. Vs. Shiv Kumar Yadav & another [2016 (2) SCC 402], the relevant portion of which, reads as follows:

"...mere observation that recall was necessary for ensuring fair trial is not enough unless there are tangible reasons to show how fair trial suffered without recall - recall is not a matter of course and the discretion given to the Court has to be exercised

judiciously to prevent failure of justice and not arbitrarily."

6.The learned counsel for the accused submitted that the accused want to examine themselves as witnesses by waiving their right of silence under Section 315 Cr.P.C. The learned counsel further submitted that the accused do not want to examine anyone as defence witnesses. Under Section 139 of the Negotiable Instruments Act, the accused is required to disprove the allegations. Further, if this petition is admitted, it will only prolong the trial and the complainant will be prejudiced.

7.In such view of the matter, this Court grants liberty to the accused to file an application under Section 315 Cr.P.C. for examining themselves as witnesses before the trial Court within a period of two weeks from the date of receipt of a copy of this order.

8.The accused are directed to surrender before the trial Court within a period of two weeks from the date of receipt of a copy of this order. On such surrender, the accused 2 and 3 shall file a bail application before the trial Court and they shall be released on bail

under Section 436(i) Cr.P.C. on they executing a bond of Rs.5,000/- (Rupees Five Thousand only) each with one surety on the same day.

9.The trial Court is directed to consider the application of the accused filed under Section 315 Cr.P.C on merits and in accordance with law. Thereafter, if the accused 2 and 3 abscond, a fresh complaint can be filed against them under Section 229-A IPC. It is made clear that the accused will not be entitled to examine any other person as witness or recall any witness who has been examined on behalf of the complainant.

The Criminal Original Petition stands disposed of with the above said directions. Consequently, connected miscellaneous petition is closed.

04.12.2017

Index :Yes/No
Speaking/Non speaking Order
cla

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P.N.PRAKASH,J.

cla

To

1.The Metropolitan Magistrate,
Fast Track Court - IV,
George Town, Chennai.

2.The Public Prosecutor,
High Court, Madras.



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