

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.06.2018

CORAM

THE HONOURABLE MRS.JUSTICE **R.HEMALATHA**

Crl.OP. No.1668 of 2011

Sri Ramakrishna Mills (Coimbatore) Ltd.,
represented by its
Power of Attorney Holder
S.Ramakrishnan

... Petitioner

-vs-

D.Ravichandran

... Respondent

Prayer: Petition filed under Section 482 of the Code of Criminal Procedure to call for the records and quash the order in Crl.M.P. No.10298 of 2010 dated 22.12.2010 in C.C. No.201 of 2003 on the file of the Judicial Magistrate, Sathyamangalam.

For Petitioner : M/s. Ram and Ram

For Respondent : M/s. S.Gunalan

ORDER

The petitioner is the complainant in C.C. No.201 of 2003 on the file of the Judicial Magistrate, Sathyamangalam. He filed a private complaint under Section 200 of Cr.P.C. against the respondent/accused for an alleged offence punishable under Section 138 of Negotiable Instruments Act.

2.It is admitted by both the parties that the complainant has closed his evidence in C.C. No.201 of 2003 and the accused was also questioned under Section 313 of Cr.P.C. and the matter now stands posted for examination of witnesses on the side of the accused. At this stage, the accused filed a petition under Section 311 of Cr.P.C. to direct the complainant to examine the Managing Director of the complainant company on the ground that he only knew that the accused handed over 30 sovereigns of gold jewels to the company. The learned Judicial Magistrate, Sathyamangalam allowed the petition observing that the accused is entitled to summon any witness and that it is just and necessary to examine the Managing Director of the complainant's company. Aggrieved over the order dated 22.12.2010 passed by the learned Judicial Magistrate, Sathyamangalam, the present petition is filed by the petitioner/complainant.

3.Learned counsel for the petitioner would contend that the petitioner has already closed their evidence and the respondent/accused cannot dictate terms as to how the prosecution should be conducted. Reliance was placed on the decision in **2009 SCC On line Del 3754 (Narender Yadav vs. State (Govt. of NCT of Delhi))** wherein it has been held thus:

7.Admittedly, the case is at the stage of prosecution evidence. In view of the provisions of Section 231 of the

Code of Criminal Procedure at this stage the trial Judge is required to examine only those witnesses whom the prosecution wants to produce. At the stage of prosecution evidence, the accused has no right to seek summoning of any particular witness even if such a witness has been cited as a prosecution witness. It is for the prosecution to decide which witness it wants to examine and which document it wants to prove.

4.He would further contend that Section 311 of Cr.P.C. should be invoked by the Court only for strong and valid reasons and it should be exercised with caution and circumspection and when the complainant himself has not chosen to examine the Managing Director of the complainant company, the accused cannot file an Application under Section 311 of Cr.P.C. insisting that the Managing Director should be examined on the side of the complainant. His specific contention is that whom to be examined and whom not to be examined is the prerogative of the complainant and the accused cannot compel the complainant to examine certain persons as witnesses. He also relied on a decision of the Madurai Bench of this Court in **CrI.O.P. (MD) No.6861 of 2017 (K.Girish Kumar vs. S.Vimaladasan)** and contended that it is the burden on the prosecution to examine necessary witnesses to prove their case and when the complainant has not examined the Managing Director, the accused cannot file an

Application under Section 311 of Cr.P.C. to compel the attendance of the Managing Director of the complainant's company.

5.A perusal of the record shows that the complainant is represented by its Power of Attorney S.Ramakrishnan and the complainant has closed the evidence and the case in C.C. No.201 of 2003 was posted for examination on the side of the defence. The main allegation in the complaint is that the respondent/accused has issued two cheques for a sum of Rs.5,00,000/- each drawn on Tamil Nadu Mercantile Bank, Tiruppur Branch and when the said cheques were presented for encashment, they were returned for the reason "insufficient funds".

6.A perusal of the reply notice dated 20.07.2003 shows that the respondent/accused has taken a stand that the cheques in question were issued only as a security for the transaction that took place between the complainant and the accused and in fact, the signatures on the cheques were not disputed by the respondent/accused.

7.In such circumstances, examination of Managing Director of the complainant's company is absolutely not necessary for the just decision of the case in C.C. No.201 of 2003. Therefore, the order

passed by the learned Judicial Magistrate, Sathyamangalam warrants interference by this Court.

8.In the result, this petition is allowed and the order in Crl.M.P. No.10298 of 2010 dated 22.12.2010 is set aside. Since the C.C. No.201 of 2003 is pending from the year 2003, the learned Judicial Magistrate, Sathyamangalam is directed to dispose of the case within a period of three months from the date of receipt of a copy of this order.

25.06.2018

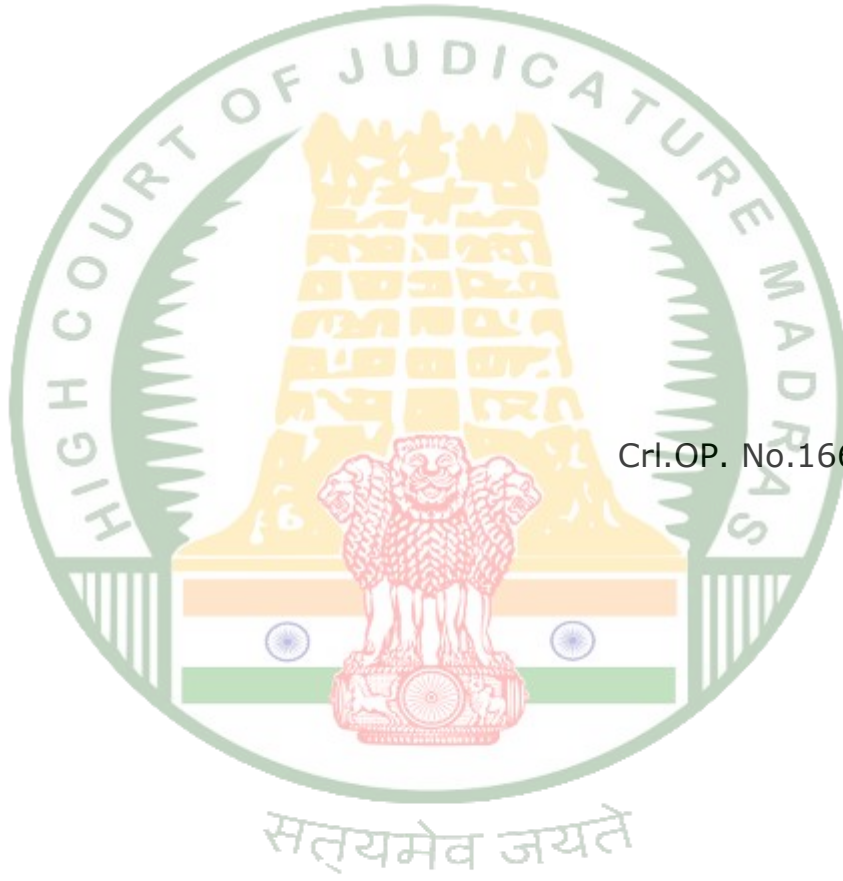
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R.HEMALATHA, J.

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