

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.08.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.21049 of 2018
and CRL.M.P.No.11430 of 2018

M.S.Rajapandian .. Petitioner

Vs

Palani ... Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to set aside the order made in C.M.P.No.1114 of 2008 in STC.No.55 of 2016 by order dated 24.07.2018 passed by the learned Judicial Magistrate No.II, Walajapet, Vellore District.

For Petitioner : Mr.V.Athikesavan

O R D E R

The petitioner is an accused in STC.No.55 of 2016 that is pending on the file of the Judicial Magistrate No.II, Wallajapet for an offence under Section 138 of the Negotiable Instruments Act. The complainant was examined as PW1 and he was also cross-examined by the accused. The accused was examined under Section 313 Cr.P.C. Thereafter, the accused filed an application under Section 315 Cr.P.C. to examine himself as defence witness, that was permitted by the trial Court and the accused examined himself as defence witness. The accused was cross-examined by the complainant. While the matter was posted for arguments, the accused filed Crl.M.P.No.114 of 2018 in STC.No.55 of 2016 under Section 311 Cr.P.C. to examine five persons as defence witnesses, which has been dismissed by the Trial Court, challenging which, the accused is before this Court.

2.Heard Mr.V.Athikesavan, learned counsel for the accused, who submitted that the examination of five witnesses are essential, in order to discharge the burden under Section 139 of the Negotiable Instruments Act.

3.This Court gave its anxious consideration to the submissions of the learned counsel for the accused. It is seen that the accused was examined under Section 313 Cr.P.C. on 29.04.2017. Thereafter, he filed an

application under Section 315 Cr.P.C., to examine himself as a witness. This was allowed by the trial Court and he examined himself in-chief only on 18.01.2018. Thereafter, he was not available for cross-examination by the complainant and he absconded. Hence, NBW was issued against him. The accused surrendered before the trial Court and recalled the NBW. On 08.05.2018, the accused was cross-examined by the complainant.

4. Thereafter, the case was posted for arguments on 14.05.2018, on 17.05.2015, 25.05.2018, 29.05.2018, 06.06.2018, 14.06.2018, 19.06.2018, 21.06.2018. On all these dates, the accused did not come forward to file any application. However, the accused has filed the present application under Section 311 Cr.P.C., in which, he has not even stated how the evidence of five persons would be relevant to decide the fact in issue.

5. In A.G. Vs Shiv Kumar Yadav (2015[9] Scale 649), the Supreme Court has given guidelines for entertaining an application under Section 311 Cr.P.C. The petition in Crl.M.P.No.1114 of 2018 that has been filed by the accused, does not satisfy the parameters set out in the said judgment. It is clear to this Court that this petitioner has been adopting dilatory tactics to prolong the trial. Under such circumstances, this Court does not find any infirmity in the order passed by the trial Court warranting interference. Hence, this petition is devoid of merits and dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

Judicial Magistrate No.II,
Walajapet,
Vellore District.

+1cc to Mr.V.ADHIKEASAVAN, Advocate SR.No.59597

CRL.OP.No.21049 of 2018

ASK(10/09/2018)