

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.6531 of 2010  
and  
M.P.Nos.1 & 2 of 2010

S.Kesavaramanujam,  
S/o.G.Srinivasan

... Petitioner/Accused

Vs.

Aalaya Garments,  
Rep. by its Partner,  
S.R.Balakrishnan,  
S/o. Rudrappa Naidu,  
No.13, Annapoorana Layout,  
Kongu Main Road,  
Tiruppur.

...Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the Order in C.R.P.No.74 of 2009 dated 05.02.2010 passed by the Additional District and Sessions Court (Fast Track Court No.IV) Coimbatore at Tiruppur confirming the order passed by the learned Judicial Magistrate No.2, Tiruppur, in C.M.P.No.5735 of 2009 in S.T.C.No.4017 of 2006.

For Petitioner : No appearance

For Respondent : Not ready in notice

O R D E R

This Criminal Original Petition is filed to set aside the Order in C.R.P.No.74 of 2009 dated 05.02.2010 passed by the Additional District and Sessions Court (Fast Track Court No.IV) Coimbatore at Tiruppur, confirming the order passed by the learned Judicial Magistrate No.2, Tiruppur, in C.M.P.No.5735 of 2009 in S.T.C.No.4017 of 2006.

2.The petitioner has filed the above case against the order dated 05.02.2010 in Criminal Revision Petition No.74 of 2009 passed by the learned Additional District and Sessions Judge, Tiruppur. This Criminal Revision Petition has been filed by this petitioner, who is an accused in S.T.C.No.4017 of 2006,

which is pending on the file of the Judicial Magistrate Court No.2, Tiruppur.

3.The petitioner herein along with his wife Mrs.A.Arumaiselvi are facing trial under Section 138 of the Negotiable Instruments Act, initiated by the respondent/complainant. The above said S.T.C. Case is pending from the year 2006. The petitioner herein has filed a petition under Section 91 of the Code of Criminal Procedure in S.T.C.No.4017 of 20016, for summoning some invoices, certified Statement of Account of the complainant from his bankers namely Central Bank of India, Tiruppur. The above said petition was filed after the completion of the evidence on the side of the complainant and when the accused was questioned. The Trial Court by its order dated 09.12.2009 had dismissed the above petition filed by the petitioner under Section 91 of the Code of Criminal Procedure. For the reason, the petition is only filed as a delaying tactics and no reason has been assigned for summoning the documents and it could be seen that the defence of the petitioner seems to be an after thought.

4.Against the dismissal of the order of the Trial Court, the petitioner had approached the Additional District and Sessions Court (Fast Track Court No.IV), Coimbatore at Tiruppur in C.R.P.No.74 of 2009, which had confirmed the Trial Court's order and had dismissed the C.R.P.No.74 of 2009 vide order dated 05.02.2010. Aggrieved against the same, the petitioner/accused filed this present Criminal Original Petition.

5.On perusal of the records it is seen that nothing could be faulted on the finding of both the Courts below. It is further noticed that the case is pending from the year 2006 and only during the year 2009, when the trial was at the fag end, when the evidence on the side of the respondent/complainant was closed. The petitioner/accused at that stage, had filed the petition under Section 91 of the Code of Criminal Procedure, which was dismissed by both the Courts below. Thereafter, by filing this Criminal Original Petition the petitioner/accused has been successfully stalling the proceedings of the Lower Court for the past eight years. The petitioner/accused has neither denied the signature nor sent reply to the statutory notice denying his liability further the cheque has been given on a business transaction.

6.The only grievance of the petitioner/accused seems to be that only three invoices namely Ex.P.5 to Ex.P.7 for Rs.23,86,545/- has been filed and no invoices for the balance amount of Rs.34,55,235/- has been filed, in conformity to the statutory notice, for the total liability claimed by the respondent/complainant of Rs.58,41,785/-. Further, the

Statement of Account of the complainant from his bankers namely Central Bank of India, Tiruppur branch.

7.The further contention of the petitioner/accused is that though the documents are available in the case papers and the complainant had not marked the same. It is the prerogative of the complainant to mark documents which he wants. If any documents are available and unmarked, the petitioner has to call upon the Trial Court to get adverse inference as per Section 114(g) of the Evidence Act. It could also be seen that if the accused is in possession of the secondary evidence of the documents, he ought to have given notice under Section 66 of the Indian Evidence Act, to mark the secondary evidence documents. In the absence of such steps taken, the stand taken by the petitioner/accused in the above case is nothing but to drag on the proceedings. The finding of the Lower Courts are sustained.

8.Hence, this Court is not inclined to interfere with the order of the Courts below, there is no error or illegality in the impugned order passed by the Courts below. The Criminal Original petition is liable to be dismissed.

9.Accordingly, the order in C.R.P.No.74 of 2009 dated 05.02.2010 passed by the Additional District and Sessions Court (Fast Track Court IV) Coimbatore at Tiruppur is confirmed and therefore, the Criminal Original Petition is dismissed on merits. Further, the Trial Court is directed to complete the trial, within a period of three months from the date of receipt of a copy of this order and Consequently, the connected Miscellaneous Petitions are closed. Post the Criminal Original Petition for reporting compliance.

Sd/-

Assistant Registrar(CS II)

//True Copy//

सत्यमेव जयते  
Sub Assistant Registrar

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To

1.The Additional District and Sessions  
Court (Fast Track Court IV),  
Coimbatore at Tiruppur.

2.The Judicial Magistrate 2,  
Tiruppur.

3.The Section Officer  
Criminal Section,  
High Court, Madras.

Crl.O.P.No.6531 of 2010

SVI (CO)  
GSP (12/07/2018)



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