

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.07.2018
Pronounced on : 11.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.27187 of 2011
and
M.P.No.1 of 2011

V.Saravanakumar,
S/o.Velusamy ... Petitioner/Accused

Vs.

S.Ramesh,
S/o.N.Subramanian ... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records and set aside the dismissal order for default relating to Criminal Revision Petition No.2 of 2011 dated 12.07.2011, on the file of the I Additional District and Sessions Judge, Coimbatore against the order passed in C.M.P.No.3276 of 2009 in C.C.No.114 of 2005 on the file of the Judicial Magistrate Court, Mettupalayam dated 18.06.2010.

For Petitioner : Mr.S.Nedunchezhiyan for
Mr.G.Sankaran

For Respondent : Not ready in notice

O R D E R

This Criminal Original Petition is filed to call for the records and set aside the dismissal order for default relating to Criminal Revision Petition No.2 of 2011 dated 12.07.2011, on the file of the I Additional District and Sessions Judge, Coimbatore against the order passed in C.M.P.No.3276 of 2009 in C.C.No.114 of 2005 on the file of the Judicial Magistrate Court, Mettupalayam dated 18.06.2010.

2.The petitioner herein, who is an accused in C.C.No.114 of 2005 pending on the file of the Judicial Magistrate Court, Mettupalayam, on a private complaint filed by the respondent/complainant herein, who is the respondent in C.C.No.114 of 2005 filed a case under Section 138 of the Negotiable Instruments Act. The respondent/complainant had filed the private complaint on the strength of the Power of

Attorney, executed by his father N.Subramanian. As per the complaint, the petitioner had borrowed a sum of Rs.3,40,000/- (Rupees Three lakh forty thousand only) from the father of the respondent. Subsequently, the said Subramanian passed away leaving behind his son/respondent, two daughters and his wife as legal heirs, since the original complaint was filed by the respondent in the capacity of Power of Attorney of his father.

3.After the demise of his father, the said Power of Attorney stands cancelled and taking this stand the petitioner had filed a petition under Section 256(2) of the Code of Criminal Procedure requesting the Trial Court to initiate preliminary enquiry under Section 340(1) of the Code of Criminal Procedure in C.M.P.No.3276 of 2009 in C.C.No.114 of 2005. The Trial Court by its order dated 18.06.2010 had passed a detailed order dismissing the contention of the petitioner. Aggrieved against the dismissal, the petitioner had filed a Criminal Revision Petition No.2 of 2011 before the I Additional District and Sessions Court, Coimbatore. The learned I Additional District and Session Judge, Coimbatore by his order dated 12.07.2011 had dismissed the petition for non-prosecution. Aggrieved against the same, the present Criminal Original Petition has been filed by the petitioner.

4.The petitioner in this petition before this Court seeks to set aside the dismissal order dated 12.07.2011 in CrI.R.C.No.2 of 2011. The petitioner's contention is that due to the non-prosecution, the Criminal Revision Petition has been dismissed and hence, the order of the Lower Appellate Court is to be set aside.

5.On a perusal of the typed set of papers filed along with this Criminal Original Petition in which the petition in CrI.M.P.No.3276 of 2009 is available has been perused. On going through the same, it could be seen that the Trial Court had passed a detailed order. Further, it could be seen that the respondent had filed a petition in C.M.P.No.1384 of 2007 to permit the respondent to continue the case after the demise of his father was allowed. In that petition, the petitioner had raised the same plea, the objections of the petitioner was negatived. Against which, the petitioner preferred a Criminal Revision Petition in C.M.P.No.103 of 2007 and the same was also dismissed on 03.03.2008.

6.This being so, the petitioner has filed seeking same relief in the second Revision Petition for similar prayer. The petitioner has been filing petitions and revisions for same prayer and to stall the progress of the case and prolong the trial in which, he had been successfully doing from the year 2005 in a summons case.

7.Further the main contention is that the consent has not been obtained from other legal heirs to continue the proceedings and except the respondent S.Ramesh. The other legal heirs of Late Subramanian are willing to withdraw the complaint.

8.Further, the contention of the learned counsel for the petitioner is that the Power of Attorney is a fabricated one. As rightly held by the Trial Court by C.M.P.No.1384 of 2007, the respondent has been permitted to continue the case, the very same objection has been raised which was negatived against which C.M.P.No.103 of 2007 was filed by the petitioner, which came to be dismissed on 03.03.2008. Further, the Trial Court had held that it is sufficient that any one of the legal heirs to proceed with the complaint filed under Section 138 of the Negotiable Instruments Act.

9.Further the learned counsel for the petitioner held that the petitioner is at liberty to call upon the other legal heirs to get themselves impleaded in the present proceedings to put forth the case of the petitioner, as contended. In such circumstances, the order in Criminal Revision Petition No.2 of 2011 dated 12.07.2011 passed by the learned I Additional District and Sessions Judge, Coimbatore is upheld and in consonance, the order dated 18.06.2010 passed in CrI.M.P.No.3276 of 2009 in C.C.No.114 of 2005 passed by the learned Judicial Magistrate, Mettupalayam is confirmed. The Criminal Original Petition filed by the petitioner is dismissed.

10.Further, this summons case has been kept pending from the year 2005 i.e. more than thirteen years due to the non co-operative attitude of the petitioner, by filing one petition or other and he has been successfully stalling the proceedings. Hence, the trial Court is directed to proceed with the trial on a day-to-day basis and complete the trial within a period of three months from the date of receipt of a copy of this Court.

11.With the above direction, this Criminal Original Petition stands dismissed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

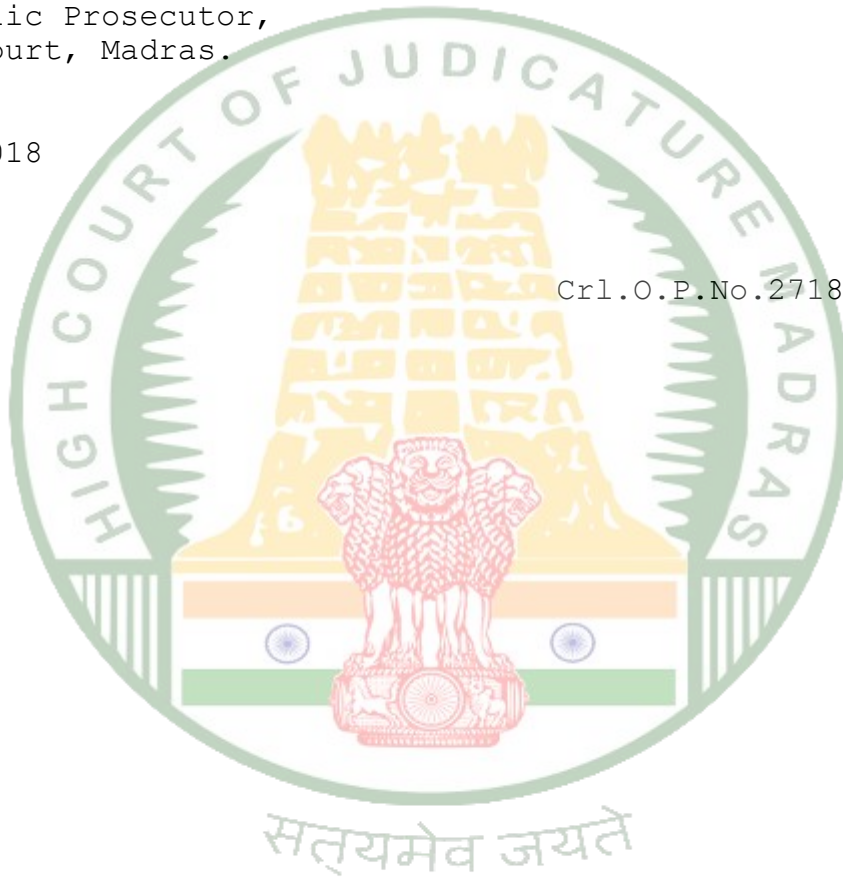
1.The I Additional District and Sessions Judge,
Coimbatore.

2.The Judicial Magistrate,
Mettupalayam.

3.The Public Prosecutor,
High Court, Madras.

PA(CO)
sm:23.7.2018

CrI.O.P.No.27187 of 2011



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