

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2018

CORAM

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.10500 of 2013
and MP.No.1 of 2013

B.Ganeshan

... Petitioner/Petitioner/Complainant

Vs.

1. Sri Harini Fabrics
A Partnership Firm
321, Gayathri Complex
K.S.Nagar
Pallipalayam
Erode - 638 008.

2. T.Tamilarasu
Partner - Sri Harini Fabrics
321, Gayathri Complex
K.S.Nagar
Pallipalayam
Erode - 638 008.

3. S.Sumathi
Partner - Sri Harini Fabrics
321, Gayathri Complex
K.S.Nagar
Pallipalayam
Erode - 638 008.

... Respondents/Respondents/Accused

Prayer : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 18.03.2013 made in C.M.P.No.4359 of 2012 in S.T.C.No.228 of 2011 on the file of the Judicial Magistrate, Fast Track Court at Magistrate Level -I, Erode.

For Petitioner : Mr.M.Guruprasad

For R1 & R2 : Mr.R.Arundattan
For Mr.C.Munusamy

For R3 : No appearance

O R D E R

This petition has been filed by the complainant to set aside the order passed by the Fast Track Court (Magistrate level) Erode in CMP.No.4359 of 2012 in S.T.C.No.228 of 2011 dated 18.03.2013.

2. The learned counsel for the petitioner has submitted that the petitioner herein has filed a private complaint under Section 138 of the Negotiable Instruments Act against the respondents herein stating that the respondents 2 and 3 are the partners of the first respondent. He further submitted that during trial, the petitioner herein examined himself as P.W.1 and during cross examination, it was suggested that he does not know whether the first accused firm is a registered one or not and that is why he has not produced any documents to that effect. Hence, the petitioner herein has filed an application in CMP.No.4359 of 2012 under Section 311 of Cr.P.C. to recall him for further examination, but the learned Judicial Magistrate without giving an opportunity to him, has mechanically dismissed the said application and therefore, he prayed to allow this petition and set aside the order passed by the Judicial Magistrate and give an opportunity to the petitioner to adduce further evidence, with regard to the fact that the first accused is a registered firm.

3. The learned counsel for the respondents 1 and 2 has submitted that the first respondent is not a registered firm and the 3rd respondent is not at all a partner in the said firm and hence a question was asked during cross examination of P.W.1 as to whether the P.W.1 knew who are the partners of the first accused. He further submitted that even though the petitioner has stated that he knows about who are the partners of the first accused, he has not produced any document to that effect. Further, he submitted that after closing of the evidence on the complainant's side, the accused were questioned under Section 313 of Cr.P.C and thereafter posted for arguments and at this stage with a view drag on the proceeding, the petitioner has filed a petition to recall him for further examination and taking into consideration of the aforesaid facts, the learned Judicial Magistrate has rightly dismissed the application and there is no merit in this petition and therefore, he prayed to dismiss the petition.

4. There is no bar for filing a criminal case against the unregistered Firm and its partners. As per Section 69 of the Indian Partnership Act, an unregistered Firm cannot file a suit against the third parties. But there is no such a bar for filing a criminal case against the unregistered Firm and its partners. As per Section 141 of the Negotiable Instruments Act, 1881 if the person committing an offence under Section 138 of

the said Act is a Company/Firm, every person who, at the time the offence committed, was in charge of, and was responsible to the Company/Firm, as well as the Company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. So, in order to attract Section 141 of the said Act, the complainant has to make an averment in the complaint that who are the persons in charge of and responsible to the Company/Firm's day-to-day administration. In this case, the complainant has stated in the complaint that the accused Nos.2 and 3 are in charge of and responsible for the administration of the accused No.1. He has reiterated the same in his evidence also. So, he has discharged the initial burden. It is for the accused persons to rebut the same by adducing evidence. So, the petitioner need not adduce any additional evidence with regard to the aforesaid facts. Therefore this petition is liable to be dismissed.

5. In the result, this petition is dismissed. Considering the fact that the case in STC No.228 of 2011 is pending for the past 7 years, the trial court is directed to dispose of the case as early as possible, preferably within three months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

msrm

To

1.The Judicial Magistrate,
Fast Track Court at Magistrate Level -I,
Erode.

2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.61063
+1cc to Mr.C.Munusamy, Advocate, S.R.No.61423

CrI.O.P.No.10500 of 2013
and MP.No.1 of 2013

NMI (CO)

rrs 02/11/2018