

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2018

CORAM :

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

CrI.O.P.No.23749 of 2018 and
CrI.M.P.No.13370 of 2018

C.Rajan

.. Petitioner

Vs.

K.Dhanasekaran

..Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order dated 27.09.2018 made in C.M.P.No.4369 of 2018 in S.T.C. No.367 of 2017 passed by the learned Fast Track Judge, Magisterial Level No.II, Poonamallee, Thiruvallur District and to direct the Fast Track Judge, Magisterial Level No.II, Poonamallee, Thiruvallur District to re-examine P.W.1.

For Petitioner : Mr.P.L.Vendan

O R D E R

This Criminal Original Petition has been filed to set aside the order dated 27.09.2018 made in C.M.P.No.4369 of 2018 in S.T.C. No.367 of 2017 passed by the Judicial Magistrate, Fast Track Court (Magisterial Level No.II), Poonamallee, Thiruvallur District and to direct the Judicial Magistrate, Fast Track Court (Magisterial Level No.II), Poonamallee, Thiruvallur District, to re-examine P.W.1.

2. The petitioner is the complainant in S.T.C.No.367 of 2017 that is pending before the Fast Track Court (Magisterial Level No.II), Poonamallee, for the offence under Section 138 of Negotiable Instruments Act.

3. For the sake of convenience, the parties will be referred to as complainant and accused.

4. It is the case of the complainant that he was a partner in "M.Foods" and he retired from the partnership, for which, the accused gave Rs.6,00,000/- by way of two cheques. The said cheques were dishonoured and therefore, the complainant issued a statutory notice and thereafter, initiated the present prosecution. The complainant filed his proof affidavit and he was cross-examined by the accused on two dates viz., 17.07.2018 and 23.07.2018. In the cross-

examination of the complainant, the accused has asked a question, whether a sum of Rs.2,00,000/- was given by the accused to the complainant, for which, the complainant has answered that the sum of Rs.2,00,000/- was given by the accused to the complainant's mother towards advance rent for the premises belonging to his mother. After the complainant was completely cross-examined, the accused closed his defence and the matter was posted for arguments.

5. At that juncture, the complainant filed C.M.P.No.4369 of 2018 in S.T.C.No.367 of 2017 under Section 311 Cr.P.C to re-examine himself for explaining as to how, the said sum of Rs.2,00,000/- was paid by the accused to his mother. The said petition has been dismissed by the trial Court, challenging which, the complainant is before this Court.

6. Heard the learned counsel for the complainant, who submitted that, after the cross-examination of the complainant was over, the junior counsel failed to conduct re-examination properly, and the Court also did not allow the re-examination. Hence, the learned counsel for the complainant prays for one more opportunity to the complainant, for examining himself in re-examination, in order to explain the ambiguity.

7. This Court perused the evidence of the complainant. The fact remains that the accused had not given any reply to the statutory notice that was issued by the complainant under Section 138 of Negotiable Instruments Act. It is the specific case of the complainant that the impugned cheques for a total sum of Rs.6,00,000/- were given as per the Deed of Declaration, under which, the complainant resigned from the partnership from the firm "M-Foods". In the light of this allegation, the averment made in the cross-examination of the complainant, that the accused had given Rs.2,00,000/- to his mother towards advance rent, requires no further clarification by conducting re-examination. Hence, this Court does not find any infirmity in the order passed by the trial Court warranting inference.

In the result, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.
mkn/ssr

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Fast Track Court (Magisterial Level No.II),
Poonamallee, Thiruvallur District.

2. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.P.L.Vendan, Advocate S.R.No.69557

KR/29/10/18

Cr1.O.P.No.23749 of 2018



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