



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.[MD] No.21381 of 2018
and
Crl.M.P.(MD) No.9897 of 2018

R.Uma Rani

: Petitioner

vs.

P.Ramesh

: Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the impugned order in Crl.M.P.No.1366 of 2018 in C.C.No.5 of 2018 on the file of the Fast Track Court at Magistrate Level, Uthamapalayam, Theni District and set aside the same.

For Petitioner : Mr.RM.Arun Swaminathan

ORDER

This criminal original petition has been filed to set aside the order dated 19.11.2018 passed in Crl.M.P.No.1366 of 2018 in C.C.No.5 of 2018 by the Fast Track Court at Magistrate Level, Uthamapalayam, Theni District.

2.The learned counsel for the petitioner would submit that the petitioner is an accused in C.C.No.5 of 2018 filed by the respondent / complainant for the offence under Section 138 of Negotiable Instruments Act. Further, he would submit that the respondent / complainant had cited one Udayakumar, S/o. Kurumathevar, as a witness on the side of the prosecution.

3.Further, the learned counsel for the petitioner would submit that as per the complaint, the said Udayakumar is the person said to have filled up the cheque, Ex.P1. Though the said Udayakumar is cited as a witness on the side of the prosecution / complainant, the complainant did not examine him. Further, he would submit that since it had been stated by the complainant that the said Udayakumar had filled up the cheque, he is a necessary witness to arrive at a just decision of this case and thereby the petitioner filed a petition to examine him as witness on the side of the defence since the complainant / prosecution had not examined him.



4. Further, the learned counsel for the petitioner would submit that the petitioner is an accused and has to take every endeavour to disprove the case of the prosecution by examining witnesses on her side. Further, he would submit that the learned Judge, without considering the same, had dismissed the petition.

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5. I have gone through the order passed by the learned Judge. The learned Judge had stated that the case stands at the stage of arguments and that there is no explanation as to why the said Udayakumar was sought to be examined as witness and further, even at the time of questioning, the petitioner has not stated anything about the witness and thereby forming an opinion that the evidence of said Udayakumar would serve no purpose had dismissed the petition to examine witness.

6. The petitioner is an accused in this case. As per Section 138 of Negotiable Instruments Act, the burden is cast upon the petitioner / accused to contradict and rebut the presumption against him and this Court is of the opinion that the examination of said Udayakumar, S/o. Kurumpathevar, who is stated to have filled the cheque, is a necessary to arrive at a just decision in this case. This Court does not appreciate the manner, the petition has been filed in the last moment at the stage of arguments, however, this Court feels that a chance may be given to the petitioner to examine the said witness on his side by imposing costs and terms.

7. In view of the above, the order dated 19.11.2018 passed in CrI.M.P.No.1366 of 2018 in C.C.No.5 of 2018 on the file of the Fast Track Court at Magistrate Level, Uthamapalayam, Theni District, is hereby set aside. The petitioner shall take steps to summon the witness, Udayakumar, S/o. Kurumpathevar and examine him, within a period of two weeks from the date of receipt of a copy of this order and on such examination of the witnesses, the trial Court shall conclude the trial and complete the same within the period of one month thereafter. The petitioner shall pay cost of Rs.3,000/- to the Legal Service Authority attached to this bench and produce the receipt as proof.

8. This criminal original petition is allowed with the above directions. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-IV)



To

1. The Judge,
Fast Track Court at Magistrate level,
Uthamapalayam,
Theni District.

2. The Officer-in-charge,
Legal Service Authority,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.RM.ARUN SWAMINATHAN, ADVOCATE IN SR No. 98621

MM

TE/BK/SAR-4 : 24/12/2018 : 3P/4C

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