



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.09.2018

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P. (MD) No.3874 of 2016
and
CRL.M.P. (MD) No.1960 of 2016

P.Jayakumar

... Petitioner/Accused

-Vs-

D.Ambi Jerome

... Respondent/Complainant

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records and set aside the order dated 02.02.2016 passed in Crl.M.P.No.70 of 2016 in S.T.C.No.227 of 2014 on the file of the learned Judicial Magistrate/Fast Track Court (Magisterial Level) No.I, Nagercoil, Kanyakumari District.

For Petitioner : Mr.A.Thiruvadi Kumar
For Respondent : Mr.N.Dilip Kumar

ORDER

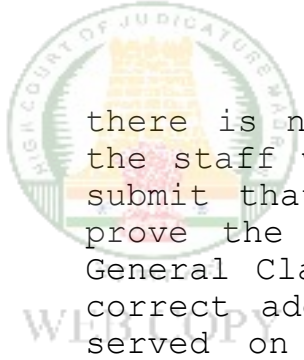
This petition has been filed by the petitioner challenging the order of the Court below allowing Crl.M.P.No.70 of 2016 permitting the respondent to reopen the case and adduce further evidence.

2.The respondent had filed a petition before the Court below in Crl.M.P.No.70 of 2016 on the ground that since the petitioner is disputing the very receipt of the notice and also the signature that has been found in the acknowledgment, the respondent wanted to examine the wife of the petitioner for the purpose of establishing that the notice sent to the residence was received by her and also to examine one Ramya, who is working in the office of the petitioner and who has received the letter that was sent to the office.

3.The Court below, on analysing the purpose for which the petition was filed, thought it fit to allow the petition and directed the petitioner to take appropriate steps to examine the above said two persons.

<https://hcservices.ecourts.gov.in/hcservices/>

4.The learned counsel for the petitioner would submit that



there is no requirement to examine the petitioner's wife and also the staff who is working in the office. The learned counsel would submit that it is enough, if the postman is examined in order to prove the service of the notice, since under Section 27 of the General Clause Act, once notice is proved to have been sent to the correct address, there is a presumption that the notice has been served on the petitioner. Therefore, learned counsel for the petitioner would submit that the present petition has been filed only with a view to harass the petitioner's wife and staff.

5.The learned counsel for the respondent would submit that the petitioner had denied the receipt of the notice. Admittedly, the signature found in the notice sent to the residence as well as the signature found in the notice sent to the office are not the signatures of the petitioner. Therefore, the learned counsel would submit that it becomes important for the respondents to establish the service of notice by examining the persons who had received the notice and acknowledged the same. The learned counsel also would submit that the Court below had only thought it fit to give an opportunity to the respondent and there is no illegality in the order passed by the Court below.

6.This Court has considered the submissions made on either side.

7.From the materials available on record, it is seen that the petitioner has denied the very service of notice in this case. During the course of cross-examination, the petitioner was questioned with regard to the signature found in the acknowledgment card. The petitioner had denied that the signature found is that of his wife. Admittedly, in this case, the notice has been sent by the respondents both to the residence as well as to the office. In the light of the very denial of the receipt of the notice by the petitioner, burden of proof is upon the respondent to prove the service of notice. Therefore, apart from examining the postman, the respondent also wants to examine the persons, who are said to have received the notice and signed the acknowledgment card. This Court finds that the respondent has to be given an opportunity in this regard. The Court below has rightly analysed the facts available on record and has thought it fit to give an opportunity to the respondent. This Court does not find any illegality or infirmity in the order passed by the Court below.

8.In fine, this Criminal Original Petition is dismissed and the order of the Court below is hereby confirmed. It is made clear that the respondent shall examine the wife of the petitioner and the staff working in the office of the petitioner only insofar as the signature found in the acknowledgment card. The respondent should not go on a fishing expedition and try to expand the scope of the petition that was filed before the Court below. Taking into consideration the fact that the Summary Trial Case is of the year 2014, the learned Judicial Magistrate /Fast Track Court (Magisterial



Level) No.I, Nagercoil, Kanyakumari District is directed to dispose of S.T.C.No.227 of 2014 within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is also dismissed.

WEB COPY

Sd/-

Assistant Registrar (Writs)

/True Copy/

Sub Assistant Registrar (CS-I)

To

The Judicial Magistrate /Fast Track Court No.I
(Magisterial Level),
Nagercoil, Kanyakumari District.

+ 1 CC TO Mr.A.THIRUVADI KUMAR, ADVOCATE IN SR No. 81990

+ 1 CC TO Mr.N.DILIP KUMAR, ADVOCATE IN SR No. 82177

TM

TE/SKN/SAR-1 : 27/09/2018 : 3P/4C

CRL.O.P. (MD) No.3874 of 2016
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