

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.VELMURUGAN

Crl.OP No.20474 of 2013
and
MP.No.1 of 2013

A.Anand .. Petitioner/Complaint

- Vs -

S.Sekar ... Respondent/Accused

Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the order dated 26.07.2013 and made in CMP.No.1701/2013 in STC.No.157/2012 on the file of Judicial Magistrate, Fast Track Court, Magisterial Level No.2, Poonamallee.

For Petitioner : Mr.R.Sreerangan

For Respondent : No Appearance

ORDER

This petition has been filed to set aside the order dated 26.07.2013 made in CMP.No.1701/2013 in STC.No.157/2012 passed by the learned Judicial Magistrate, Fast Track Court, Magisterial Level No.2, Poonamallee.

2. The petitioner filed a complaint before the learned Judicial Magistrate, Fast Track Court (Magisterial Level No.2), Poonamallee for the offence under Section 138 of Negotiable Instruments Act. The said complaint was taken on file in STC.No.157 of 2012 and the same is pending. During trial, the petitioner was examined as PW-1 and after completing the evidence, he filed a petition under Section 311 Cr.P.C in CMP.No.1701 of 2013 for recalling the witness and also for filing the additional proof affidavit and documents. The said

petition was dismissed by the learned Judicial Magistrate on 26.07.2013. Challenging the said order, the petitioner is before this Court.

3. The learned counsel for the petitioner would submit that even though the cheques were issued for discharging legally enforceable debt, at the time of cross-examination, he was put a suggestion by the defence counsel that is there any documents to show for preexisting debt. Under the circumstances, in order to prove that the petitioner had documents for preexisting debt, he filed the petition under Section 311 Cr.P.C in CMP.No.1701 of 2013, which was considered and rejected by the learned Judicial Magistrate. If the petition in CMP.No.1701 of 2013 is allowed, no prejudice would be caused to the respondent. Therefore, the order dated 26.07.2013 passed by the learned Judicial Magistrate warrants interference.

4. Heard the learned counsel for the petitioner. Despite several opportunities given to the respondent, none appeared for him.

5. It is seen that the petitioner herein filed a private complaint under Section 200 Cr.P.C against the respondent for the offence under Section 138 of Negotiable Instruments Act. The said complaint was taken on file by the learned Judicial Magistrate-I, Poonamallee in STC.No.157 of 2012. During the Trial, the petitioner was examined as PW-1. After completing the examination, the petitioner filed a petition under Section 311 Cr.P.C for recalling the witness and for filing additional proof affidavit and additional documents, which was not considered by the learned Magistrate. After the cross-examination, the petitioner wanted to file the documents, which was proved to show the preexisting liability of the respondent.

6. Considering the facts and circumstances of the case, this Court is of the view that the learned Magistrate ought to have considered the application and given liberty to the petitioner/complainant to prove his case. In the circumstances, this Court finds that the order passed by the learned Magistrate is liable to be set aside.

7. It is seen that the complaint has been transferred to the learned Judicial Magistrate, Alandur on the point of jurisdiction and the same is pending before the said Court.

8. In view of the above, this Criminal Original Petition is allowed. The learned Judicial Magistrate, Alandur, is directed to take the petition filed by the petitioner in CMP.No.1701 of 2013 and after getting additional proof affidavit and additional documents, consider afresh and dispose of the same in accordance with law. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

// True Copy//

Sub Assistant Registrar

KMI

To

1. The Judicial Magistrate,
Fast Track Court,
Magisterial Level No.2,
Poonamallee.

2. The Judicial Magistrate,
Alandur.

+1cc to Mr.R.Sreerangan, Advocate, SR.No.99525.

SJ(CO)
CSR: 09.01.2020

Cr1.OP No.20474 of 2013

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