

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.01.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

Crl.OP.No.24891 of 2013
and
MP.No.1 of 2013

R.Gengusamy

... Petitioner

Vs.

R.Senthil Kumar

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to set aside the order passed in Crl.MP.No.3297 of 2013 in C.C.No.2 of 2009 dated 11.07.2013 by the learned Judicial Magistrate No.1, Udumalpet and allow the Criminal Original Petition.

For Petitioner : Mr.N.Umapathi

For Respondent : No Appearance

ORDER

This petition has been filed by the respondent/accused to set aside the Order passed by the Judicial Magistrate No.1, Udumalpet in Crl.MP.No.3297 of 2013 in C.C.No.2 of 2009 dated 11.07.2013.

2. The respondent herein/complainant has filed a private complaint under Section 138 of the Negotiable Instruments Act against the petitioner herein. During Trial, the respondent herein examined himself as P.W.1 and after closing of the evidence on the side of the complainant, the accused was questioned under Section 313 of Cr.P.C and thereafter, the accused examined himself as D.W.1 and thereafter when the matter was posted for arguments, the respondent herein has filed an application under Section 311 of Cr.P.C to recall P.W.1 stating that he wants to produce certain documents on his side. He also filed a memo, wherein, he has stated that he wants to produce his bank statements and accounts of the Company viz., Thirisul Textiles.

3. The petitioner herein has opposed the said petition by filing counter. In the counter, he has stated that already, the matter has been posted for arguments and the complainant has filed written arguments and at that stage, without filing petition to re-open the case, the complainant has filed petition to recall P.W.1. Further, he has stated that in the petition, he has not stated what are the documents to be marked.

4. The learned Judicial Magistrate No.1, Udumalpet, after considering the rival submissions has allowed the said petition by the Order dated 11.07.2013. Feeling aggrieved, the respondent/accused has filed the present petition to set aside the order passed by the learned Judicial Magistrate in CrI.MP.No.3297 of 2013 in C.C.No.2 of 2009.

5. Though notice was served on the respondent/complainant and his name also printed in the cause list, he has not appeared either in person or through counsel. After hearing the arguments of the learned counsel for the petitioner/accused and perusing the records, order is being passed in this petition.

6. The learned counsel for the petitioner has submitted that when the case was posted for arguments, the complainant has filed petition to recall P.W.1 for further examination, even without filing petition, to reopen the case. He further submitted that the accused filed counter, pointing out the defects found in the petition as the complainant has not stated what are the documents to be marked and only thereafter, he has filed a memo stating that he wants to produce statements of account of various banks and also the accounts of company viz., Thirisul Textiles. He further submitted that the learned Judicial Magistrate without considering the fact that already the evidence was closed on both sides and also the fact that the P.W.1 has categorically admitted in his evidence that he was not having sufficient funds in his bank account and he was having money in his hands only and in such a case, if the complainant is allowed to mark the bank statements that would certainly affect the case of the accused. He further submitted that the complainant now wants to introduce new case and hence he prayed to set aside the order passed by the learned Judicial Magistrate.

7. A perusal of the petition filed by the respondent herein/ complainant in CrI.MP.No.3297 of 2013 in C.C.No.2 of

2009 shows that he has not specifically stated what are the documents going to be marked. After filing counter by the accused, the complainant has filed a memo stating that he wants to produce bank account statements and also accounts of a company viz., Thirusul Textiles. Whether those documents are relevant for deciding the case or not has to be decided at the time of final disposal of the case by the Trial Court as observed by the Hon'ble Supreme Court in Bipin Shantilal Panchal -Vs. State of Gujarat and Another (Special Leave Petition (Crl) 223 of 2000) dated 22.02.2001. At the stage of collecting evidence, the Trial Court need not pass order as to whether the said documents are relevant or admissible in evidence or not. At the time of marking the said documents as Exhibits, it is open to the petitioner/accused to raise objections. If any such objection is raised, the Trial Court has to record the said objection and mark the documents tentatively subject to the objection. Then, the Trial Court has to give finding at the time of disposing of the main case as to whether those documents are relevant or admissible in evidence or not.

8. In the petition filed by the respondent or in the memo filed by the respondent/complainant, he has not stated a new case and in his petition that he simply stated he wants to mark certain documents. Subsequently, he has stated in the memo that the said documents are bank statements and account of one Company viz., Thirusul Textiles. So, it cannot be said that the complainant wants to introduce a new case.

9. If the complainant has already made admission in his evidence that at the time of transaction, he was not having sufficient money in his accounts, the petitioner can argue before the Trial Court at the time of argument that the said admission has to be used in his favour.

10. In this case, the learned Judicial Magistrate has exercised his discretion positively and in the said discretion, unless the petitioner established any prejudice, this Court cannot interfere. In this case, the petitioner has not stated in what way his defence is affected by allowing the aforesaid petition. Therefore, this Court is of the view that the order passed by the learned Judicial Magistrate does not warrant any interference.

11. In the result, this petition is dismissed. Consequently, connected miscellaneous petition is closed. It is open to the petitioner/accused to raise objection at the time of

marking those documents and if any such objection is raised, the Trial Court has to record the said objection and mark the documents tentatively as exhibits and give specific finding in the final judgment with regard to the admissibility and relevancy of those documents and dispose of the case in accordance with law. It is also open to the petitioner to question the veracity of those documents.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

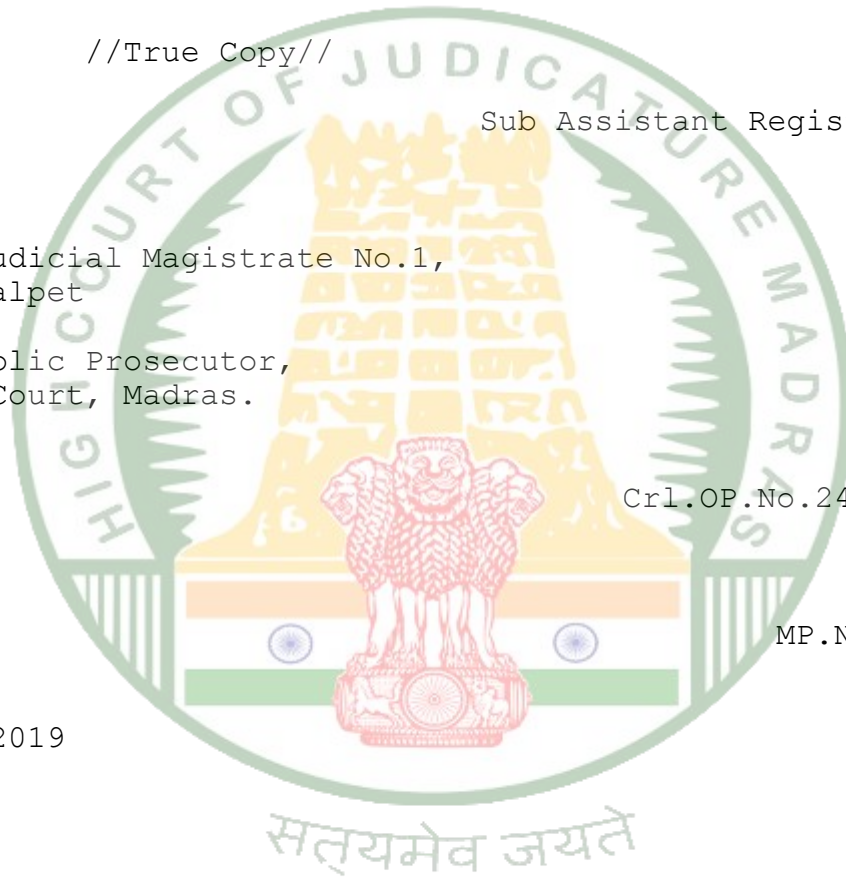
1. The Judicial Magistrate No.1,
Udumalpet
2. The Public Prosecutor,
High Court, Madras.

Crl.OP.No.24891 of 2013

and

MP.No.1 of 2013

rsv(co)
nr 14/03/2019



WEB COPY