

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2019

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.28015 of 2013 and
Crl.M.P.No.1 of 2013

S.Shanthalakshmi

... Petitioner/Petitioner

Versus

V.N.Palani

... Respondent/Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records of the Judicial Magistrate (Fast Track Court), Vellore in C.M.P.No.2498 of 2013 in C.C.No.415 of 2011 and set aside the order dated 08.10.2013 and allow the petition and permit the petitioner to further cross examine the complainant.

For Petitioner : Mr.Haroon for
M/s.T.S.Gopalan and Co.

For Respondent : Mr.P.Chandrasekar

ORDER

This Criminal Original Petition has been filed to set aside the order dated 08.10.2013 passed by the learned Judicial Magistrate (Fast Track Court), Vellore in C.M.P.No.2498 of 2013 in C.C.No.415 of 2011.

2.The petitioner is an accused in C.C.No.415 of 2011, on a private complaint filed by the respondent/complainant for the offence under Section 138 of the Negotiable Instruments Act, which was Initially taken on file as C.C.No.251 of 2003 by the learned Judicial Magistrate No.IV, Vellore, transferred to the file of the Judicial Magistrate Court No.II, Vellore, renumbered as S.T.C.No.151 of 2006 and thereafter, re-transferred to the file of Judicial Magistrate, Fast Track Court, Vellore and it is pending as C.C.No.415 of 2011.

3.The contention of the learned counsel for the petitioner/accused is that the petitioner is a Divorcee women who had taken over the business of her father who was running a

cinema theater at Villupuram. In course of her business, she had availed a loan for a sum of Rs.4,90,000/- from Sowbagya Syndicate through its Managing Director viz., N.P.Srinivasan. During availment of loan, she had entrusted several cheques and Pro-notes to Sowbagya Syndicate, she had been regularly paying the interest and part amount of Principal. According to the petitioner, the entire principal amount has been repaid as of the year 2004. The respondent/complainant is a stranger and the petitioner had no transaction with him. In fact, the respondent is a stooge at the hands of N.P.Srinivasan, who used the cheques during the availment of loan with Sowbagya Syndicate, misused them and initiated the above case against her.

4.The petitioner unable to withstand the harassment and undue pressure exerted by the respondent and others, she left from Villupuram and residing in Chennai from the year 2004 onwards. Taking advantage of her absence, her property has been trespassed by the respondent and others, for which she had initiated civil proceedings.

5.The learned counsel for the petitioner submitted that the petitioner had lodged a complaint before the District Crime Branch, Vellore a case was registered in Crime No.50 of 2011 for the offence under Sections 120(b), 467, 468, 471 r/w 454, 380 and 506(i) of IPC. Further submitted that her counsel, who appeared for the petitioner in the trial Court had left his practice and the new counsel has been engaged in the year 2011, who filed this petition to recall PW1. He further submitted that the trial Court failed to look into vital aspects and important piece of evidence, which were sought to be brought on record had dismissed the petition filed under Section 311 of Cr.P.C on the ground that the petition has been filed only for protracting the proceedings, against which, the present Criminal Original Petition has been filed.

6.The learned counsel for the respondent would submit that in discharge of the liability, the petitioner had issued the cheques, the signature in the cheques are not denied by the petitioner. Hence, the presumption under Section 118 and 139 of the Negotiable Instruments Act is in favour of the respondent. He further submitted that the petitioner had been successfully dragging the case till today, by filing one petition or other, failed to appear on many occasions before the trial Court. When the NBW were attempted to be executed, she appeared before the Court below and recalled the NBW.

7.Further, he submitted that the registration of the F.I.R in Crime No.50 of 2011 is much after the issuance of the cheque dated 07.05.2003. Statutory notice was issued to the petitioner on 16.05.2003, the petitioner neither replied to the same nor

made the payment. She filed this petition to recall PW1 at a belated stage, the petitioner has not disclosed in her petition any justifiable reason for further cross examination of PW1. The FIR in Crime No.50 of 2011 had been closed. Further, he submitted that a civil suit in O.S.No.114 of 2005 was filed by the respondent seeking recovery of possession before the Subordinate Court, Vellore and it was also dismissed. Against which, the respondent had filed A.S.No.12 of 2014 and the petitioner had filed an appeal in A.S.No.13 of 2014 for other relief. Both the cases are pending before the Principal District Judge, Vellore.

8.Considering the rival submissions, this Court finds that the order of the Court below need not be interfered with. The trial Court adjourned the case lastly on 29.04.2019. The learned counsel for the respondent sought time bound disposal of the C.C.No.415 of 2011. In view of the fact that the questioning of accused under Section 313 of Cr.P.C has been completed and the case is nearing completion. Hence, the trial Court is directed to complete the trial in C.C.No.415 of 2011 within a period of one month from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

Vv2

TO

The Judicial Magistrate (Fast Track Court),
Vellore.

+1cc to Mr.P.Chandrasekar, Advocate, S.R.No. 45642
+1cc to Mr.T.S.Gopalan & Co Advocate, S.R.No. 45519
+2 Ccs +1cc to Mr.P.Chandrasekar, Advocate, S.R.No. 45642
(19/06/2019)

CRL.O.P.No.28015 of 2013

SJ(CO)
GN(13/06/2019)