



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.O.P.No.29242 of 2013
and M.P.No.1 of 2013

G.Pannerselvam

..Petitioner/Petitioner

Vs

P.T.Sivakumar

..Respondent/Respondent

Prayer: Crl.O.P., filed under Section 482 of Cr.P.C., praying to call for the records in C.M.P.No.3380 of 2013 in C.C.No.127A of 2011 vide order dated 03.09.2013 on the file of Judicial Magistrate No.I, Thirupathur, Vellore District and to set aside the same and to permit to summon of the witness and give evidence.

For Petitioner : Mr.M.Sathishkumar

For Respondent : Service not effected.

ORDER

This Crl.O.P., is filed praying to call for the records pertaining to C.M.P.No.3380 of 2013 in C.C.No.127A of 2011 and the order dated 03.09.2013 passed by learned Judicial Magistrate No.I, Thirupathur, Vellore District, and to set aside the same and to permit the petitioner to summon the witness and give evidence.

2. Heard the learned counsel for the petitioner. None appeared for the respondent.

3. The Revision Petitioner is the complainant in C.C.No.127A of 2011. The respondent therein is the accused. The Petitioner filed a complaint under section 200 Cr.P.C., for the offence under Section 138 of Negotiable Instruments Act before the learned Judicial Magistrate No.1, Thirupathur. The learned Magistrate has taken cognizance of the complaint in C.C.No.127A of 2011.



4. After completing the trial, during the course of argument, the petitioner filed a petition under Section 311 of Cr.P.C. in C.M.P.No.3380 of 2013 in C.C.No.127A of 2011, before the trial court to examine additional witnesses and that petition was dismissed by the learned Magistrate. Challenging the said order passed in C.M.P.No.3380 of 2013, dated 03.09.2013, the petitioner has filed the present Crl.O.P., before this court.

5. The learned counsel for the petitioner would submit that during the cross examination, the respondent posted a question that the petitioner has not proved his means and whether he is going to examine one Devaraj, who is said to have been present at the time of transaction. Therefore, in order to prove the case of the petitioner, the petition has been filed.

6. The trial was commenced on 20.07.2012. The petitioner was cross examined on 08.10.2012. P.W.2 was examined on 26.12.2012. Subsequently, on the side of defence, examination of defence witnesses commenced on 14.05.2013 and D.W.2 was examined on 01.07.2013 and it was closed on 08.07.2013. After closing the defence side evidence, the defence side counsel argument was heard. However, at the request of the counsel for the petitioner herein/complainant therein, the matter stood adjourned to 15.07.2013 for their arguments. On the said date i.e, 15.07.2013, the counsel for the petitioner/complainant, instead of arguing the matter, filed a petition under section 311 of Cr.P.C., seeking to permit him to summon additional witness and give evidence in the case.

7. A perusal of the records reveal that for a period of one year, trial was going on and the petitioner has not taken any steps to examine any of the witnesses as sought for by him in his petition during the said period, but only after completing arguments on the side of the defence, he filed a petition in CMP.No.3380 of 2013 in C.C.No.127A of 2011, seeking to summon additional witness. In such circumstances, the Magistrate found that in order to fill up the lacuna, the petitioner has filed the petition u/s.311 Cr.P.C. and therefore, dismissed the petition.

8. On a careful perusal of the records, this court does not find any perversity in the order passed by the learned Magistrate and it is not a fit case to invoke Section 482 Cr.P.C., especially when sufficient opportunity was given to the petitioner and this court is of the considered view that the Magistrate has exercised his discretionary power and unless this



court finds that there is arbitrariness in dismissing the said petition filed u/s.311 Cr.P.C., the court need not invoke Section 482 Cr.P.C., and interfere with the said order of the Magistrate. There is no merit in this petition. Therefore, this Criminal Original Petition is dismissed. Learned Judicial Magistrate No.I, Thirupathur, Vellore District, is directed to hear the arguments of both parties and dispose of the case in C.C.No.127A of 2011, within one month from today. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate No.I, Thirupathur, Vellore District

copy to:

The Section Officer, Criminal Section, High Court, Madras.

CRL.O.P.No.29242 of 2013

Bs (co)
nr 20/12/2019