

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Cr1.O.P.No.2757 of 2019
and Cr1.M.P.No.1787 of 2019

S.Valliappan (Proprietrix)
M/s.Valcos Papers
No.19/4, Stringers Street,
Broadway, Chennai - 600 108. ... Petitioner/Complainant

Vs.

1.M/s.Khalifas' Papers,
Represented by Mohammed Thaslim,
No.51/2, Anderson Street,
Chennai - 600 001.

2.Mrs.Masudha Begum,
M/s.Khalifas' Papers,
No.51/2, Anderson Street,
Chennai - 600 001. ...Respondents/Accused

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records relating to the Order dated 15.11.2018 passed in C.M.P.No.4658 of 2018 in C.C.No.84 of 2013 on the file of the IV Fast Track Judge - Cum - Metropolitan Magistrate at George Town, Chennai and set aside the Order.

For Petitioner : Mr.AR.M.Arunachalam

For Respondents : No Appearance

ORDER

This petition has been filed to call for the records relating to the Order dated 15.11.2018 in C.M.P.No.4658 of 2018 in C.C.No.84 of 2013 on the file of the IV Fast Track Judge - Cum - Metropolitan Magistrate at George Town, Chennai and set aside the Order.

2. This petition has been filed by the petitioner / complainant to challenge the order passed in C.M.P.No.4658 of 2018 in C.C.No.84 of 2013 on the file of the learned IV Fast Track Judge cum Metropolitan Magistrate at George Town, Chennai by an order dated 15.11.2018 thereby dismissing the petition

filed under Section 311 Cr.P.C. to reopen the evidence on the complainant side witness thereby enabling the complainant to examine "The Information Officer, Commercial Tax Department, Joint Commissioner (North), Greams Road, Chennai-6" as his witness.

3. The learned counsel for the petitioner would submit that the petitioner engaged in the business of selling papers and related stationary items to prospective parties. In this regard, the petitioner had business transaction with the accused for over a period of time. In the year 2013, the accused issued cheque and the said cheque was returned as dishonoured. Therefore, he initiated complaint under Section 138 Negotiable Instruments Act. While cross examining of PW1 by the counsel for the accused, he put a specific question with regard to receipt of goods. The specific case of the petitioner / defacto complainant is that the accused has received the goods and it is only on the payment, they have issued cheque. In this regard, the accused admitted the receipt of the goods from the complainant and also claimed VAT credit on basic value of each and every invoice raised by the complainant from the Government Sales Tax authorities. Therefore it is very essential to examine the said "Information Officer of Commercial Tax Department. In this regard, as such the petitioner / defacto complaint filed petition under Section 311 Cr.P.C. and without considering the above facts and circumstances, the learned IV Fast Track Judge cum Metropolitan Magistrate at George Town, Chennai. Therefore he wants to set aside the impugned order.

4. Though the respondents filed vakalat, they did not appear today and remained absent.

5. It is seen from the complaint and also from the cross examination of PW1, the accused completely denied the receipt of the goods from the defacto complainant. In this regard, the main allegation is that on receipt of the goods by the accused, he also availed VAT credit facility on basic value of each and every invoice raised by the defacto complainant. Therefore, the witness has to be examined by the petitioner / defacto complainant and it is very much needed in this case. Therefore, this Court is inclined to interfere with the order passed by the learned IV Fast Track Judge cum Metropolitan Magistrate at George Town, Chennai. Accordingly the order passed in C.M.P.No.4658 of 2018 in C.C.No.84 of 2013 is set aside and the petitioner is permitted to reopen the evidence on his side and permitted to examine "The Information Officer, Commercial Tax Department, Joint Commissioner (North), Greams Road, Chennai-6" as his witness. Further the learned counsel for the petitioner has submitted that the case is posted on 26.02.2019 and hence,

he has requested that the petitioner may be directed to examine the said Officer on 26.02.2019 itself. As such the petitioner is permitted to examine the above said Officer on 26.02.2019 and on the same day, the respondent / accused is also directed to finish the cross examination.

6. It is made clear that if the petitioner fails to examine the above Officer on that date, the learned IV Fast Track Judge cum Metropolitan Magistrate at George Town, Chennai is directed to proceed with the trial in accordance with law.

7. Further, considering the case is of the year 2013, the learned IV Fast Track Judge cum Metropolitan Magistrate at George Town, Chennai is directed to complete the trial in C.C.No.84 of 2013 within a period of two months from the date of examination of the said Officer.

8. With the above directions, this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Pam/Lok

To

1. The IV Fast Track Judge Cum Metropolitan Magistrate,
George Town, Chennai.

2. Do through The Chief Metropolitan Magistrate,
Egmore, Chennai.

+1 cc to Mr.AR.M.Arunachalam, Advocate Sr.No.10946

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GJ(CO)
CSL/12.02.2019