

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 27.04.2019
CORAM:
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN
Crl.O.P.Nos.6981 and 7178 of 2019

Padma Kuberan

...Petitioner
(in both petitions)

-Vs-

P.Gopinath

... Respondent
(in both petitions)

Prayer in 6981/2019: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to set aside the order in Crl.M.P.No.269 of 2018, dated 06.12.2018 passed by the learned XV Additional City Civil and Sessions Court, Chennai, dismissing the application filed by the petitioner under Section 391 CrPC., praying to permit the petitioner herein to examine as defense witness and to examine other 4 witnesses and to mark 13 documents as Additional Documents.

Prayer in 7178/2019: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to set aside the order in Crl.M.P.No.270 of 2018, dated 06.12.2018 passed by the learned XV Additional City Civil and Sessions Court, Chennai, dismissing the application filed by the petitioner under Section 311 CrPC., to recall and re-examine the complainant side witness viz., PW1 and the accused side witnesses viz., DW1 Branch Manager, Bank of Baroda, Errabalu Chetty Street, Chennai - 1 and DW2 Branch Manager, Standard Chartered Bank, Rajaji Salai, Chennai - 1.

For Petitioner : Mr.S.Satish Rajan
(in both petitions)

For Respondent : Mr.G.Ganesh Babu
(in both petitions)

COMMON ORDER

(i) This Criminal Original Petition in Crl.O.P.No.6981/2019 has been filed challenging the order in Crl.M.P.No.269 of 2018, dated 06.12.2018 passed by the learned XV Additional City Civil and Sessions Court, Chennai thereby dismissing the petition filed by the petitioner under Section 391 CrPC., to permit the petitioner herein to examine as defence witness and to examine

other four witnesses and to mark 13 documents as additional documents.

(ii) This Criminal Original Petition in CrI.O.P.No.7178/2019 has been filed challenging the order in in CrI.M.P.No.270 of 2018, dated 06.12.2018 passed by the learned XV Additional City Civil and Sessions Court, Chennai thereby dismissing the application filed by the petitioner under Section 311 CrPC., to recall and re-examine the complainant side witness viz., PW1 and the accused side witnesses viz., DW1 Branch Manager, Bank of Baroda, Errabalu Chetty Street, Chennai - 1 and DW2 Branch Manager, Standard Chartered Bank, Rajaji Salai, Chennai - 1.

2. The case of the complainant, in brief, is that the accused had approached the complainant immediate need of loan to meet their business and he had arranged a loan of Rs.14,00,000/- on 15.05.2015 together with interest at the rate of 15% on condition to repay the loan on or before 15.03.2016. Thereafter, the accused had failed to repay the said loan amount. After repeated requests of the complainant, the accused had issued the cheques bearing Nos.000364, dated 10.02.2016 for a sum of Rs.4,00,000/- drawn on Bank of Baroda, Errabalu Chetty Street, Chennai; 694841, dated 11.03.2016 for a sum of Rs.9,00,000/- drawn on Standard Chartered Bank, Chennai and 00040-, dated 06.02.2016 for a sum of Rs.1,00,000/- drawn on Bank of Baroda, Errabalu Chetty Street, Chennai in favour of the Complainant. The accused had kept on requesting the complainant not to deposit the cheques and it leads suspicious status of repayment condition and finally on 05.04.2016, the accused had instructed to deposit all the cheques. Then, the complainant had presented the cheques for encashment on 05.04.2016 in his bank viz., Indian Overseas Bank, Washermenpet Branch and the same was returned for the reasons "Funds Insufficient" on 08.04.2016. Thereafter, the complainant had issued a legal notice calling upon the accused to repay the said loan amount on 20.04.2016 and it was duly served on 21.04.2016. After receipt of the legal notice all the accused neither settle the amount nor had issued any reply. Hence the present complaint was filed.

3. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

4. It is seen that the petitioner is arrayed as second accused in the proceedings initiated by the respondent herein for the offence punishable under Section 138 of the Negotiable Instruments Act in C.C.No.1542 of 2016, pending on the file of the learned Metropolitan Magistrate, Fast Track Court-IV, George Town, Chennai. There are totally four accused in which the

petitioner is arrayed as second accused by an order dated 09.02.2018. The accused 1 to 3 were convicted and sentenced them to undergo six months simple imprisonment and A1 and A3 ordered to pay a compensation of Rs.14,00,000/-, as against the said conviction, the petitioner had preferred an appeal in C.A.No.87 of 2018 on the file of the learned XV Additional City Civil and Sessions Court, Chennai and the same is pending. Thereafter, the petitioner has filed an application under Section 391 CrPC to examine other 4 witnesses and to mark 13 documents as additional documents.

5. It is also seen that both the husband and wife filed a Original Petition in O.P.No.1973 of 2015 and the same was dissolved by a decree of divorce by mutual consent in the order passed by the learned II Additional Principal Judge, Family Court, Chennai, dated 09.01.2016. Moreover, the accused have alleged the cheques were given only in the year February, 2017. Further, it is seen from the partnership deed dated 13.01.2014 and it has been dissolved by the Partnership Firm. At the time of during trial, the petitioner could not able to file those documents. Now, it is seen that there are vital documents to put forth their case in a full-fledged manner. Therefore, the petitioner may be given one more opportunity to mark the following documents.-

- (i) The Deed of Dissolution of Partnership dated 31.03.2014.
- (ii) The Decretal Order dated 09.01.2016 passed in O.P.No.1973 of 2015 regarding dissolution of the marriage between A2 and A3.
- (iii) Register of Wages in Form-R.
- (iv) Ledger account of the first accused company viz., M/s.Bharath Shipping Agency with P.Gopinath, the respondent/complainant.
- (v) Statement of account dated 30.09.2013 with Standard Chartered Bank pertaining to the Current Account bearing No.42705403935.
- (vi) Statement of Account dated 31.01.2014 with Standard Chartered Bank pertaining to the Current Account bearing No.42705403935 and
- (vii) Reply Notice dated 11.05.2016.

6. Considering the facts and circumstances of the case, this Court finds that an opportunity has to be given to the petitioner to establish her case. Accordingly, the impugned order dated 06.12.2018 passed in Crl.M.P.Nos.269 and 270 of 2018, dated 06.12.2018 on the file of the learned XV Additional City Civil and Sessions Court, Chennai, is hereby set aside and the Criminal Original Petitions are allowed. The First Appellate

Court is directed to permit the petitioner to adduce defence side witnesses as stated in the petition and to mark the aforesaid documents stated supra. The First Appellate Court is directed to afford an opportunity to the petitioner to examine and mark the documents stated supra by fixing a specific date after giving notice to both sides. If the petitioner fails to examine the defence witnesses and mark the documents on the date fixed by the First Appellate Court, the First Appellate Court is at liberty to proceed with the appeal on merits and in accordance with law. The aforesaid exercise is directed to be completed within a period of three months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

msm

To

1. The additional Sessions Judge,
The XV Additional City Civil and Sessions Court, Chennai.

2.The Public Prosecutor, High Court, Madras.

+lcc to M/s.R.Ganesh Babu, Advocate sr.41741

+lcc to Mr.S.Satish Rajan, Advocate sr.41126

Cr1.O.P.Nos.6981 and 7178 of 2019

rsv(co)
nr 27/06/2019

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