

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.4352 of 2019

K.M.Balasubramaniam

... Petitioner

Vs.

The State by Inspector of Police,
Kanchikoil Police Station,
Crime No.7 of 2003,
Erode District.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 05.02.2019 made in Crl.M.P.No.274 of 2019 in C.C.No.416 of 2004 passed by the learned District Munsif Cum Judicial Magistrate, Kodumudi, full Additional charge of the District Munsif Cum Judicial Magistrate Court, Perundurai.

For Petitioner : Mr.N.Manokaran
For Respondent : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor.

O R D E R

This Criminal Original Petition has been filed seeking to set aside the order dated 05.02.2019 made in Crl.M.P.No.274 of 2019 in C.C.No.416 of 2004, passed by the learned District Munsif cum Judicial Magistrate, Kodumudi, thereby dismissed the application filed by the petitioner under Section 311 Cr.P.C to cross examine the complainant.

2.It is seen that the complainant is the wife. She filed a complaint alleging that the petitioner and his second wife has misused the credit card of the complainant to the tune of Rs.25,217/-. The respondent registered a case in Crime No.7 of 2003 and filed a charge sheet for the offences under Sections 419, 420, 465, 468, 471 and 403 IPC. The learned Judicial Magistrate, Perundurai has taken cognizance in C.C.No.416 of 2004. Thereafter, the prosecution examined their witnesses. Subsequently, the defacto complainant filed a petition under Section 311 Cr.P.C., to examine the investigation officer. Though, the recall petition was allowed by the trial Court, the investigation officer did not appear. Therefore, their evidence is closed. Aggrieved by the said order, the defacto complainant

filed a petition in CrI.O.P.No.16673 of 2011 before this Court and the same was allowed on 28.09.2018 and the defacto complainant was permitted to cross examine the investigation officer. Accordingly, the investigation officer was present and he was cross examined on 18.12.2018. In the mean while, the petitioner and the defacto complainant have settled their issues amicably before the National Lok Adalat and an award has also been passed by the National Lok Adalat on 06.12.2014 itself. Since the offences are not compoundable, the petitioner filed a petition to recall the defacto complainant and P.W.1 to mark the award passed by the National Lok Adalath in No.197 of 2014 dated 16.12.2014. But, the learned Magistrate had wrongly assessed that the offences are compoundable and the petitioner failed to file a petition under Section 320 Cr.P.C., But, it is seen that the offences under Section 494 IPC r/w 109 are not compoundable.

3. Therefore, the order dated 05.02.2019 made in CrI.M.P.No.274 of 2019 in C.C.No.416 of 2004 by the learned District Munsif Cum Judicial Magistrate, Kodumudi, is set aside and the petitioner is permitted to cross examine the defacto complainant and to mark the award passed by the National Lok Adalath dated 06.12.2014, on the next hearing date. If, he fails to cross examine and mark the said document, the learned Magistrate is directed to proceed with the trial in accordance with law.

4. With the above observations, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

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To

Sub Assistant Registrar

1. The State by Inspector of Police,
Kanchikoil Police Station,
Erode District.
Crime No.7 of 2003

2. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.N.Manoharan, Advocate, S.R.No.14850

CrI.O.P.No.4352 of 2019

KS(CO)
SSM(19/02/2019)