

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.9769 of 2019
in Crl.M.P.No.5095 of 2019

K.Mohan

...Petitioner/Accused

-Vs-

M.Balamurugan

... Respondent/Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to set aside the order passed by the Learned Metropolitan Magistrate Fast Track Court No.III, Saidapet, Chennai in C.M.P.No.860 of 2019 in C.C.No.714 of 2011.

For Petitioner : Mr.K.M.Balaji

For Respondent : Mr.M.Deivanandam

ORDER

This Criminal Original Petition has been filed challenging the order passed by the Court below, allowing the application filed under Section 311 of Cr.P.C to recall PW.1 and mark the award dated 25.01.2012.

2. The learned counsel for the petitioner submitted that the petitioner had already succeeded in the appeal that was filed against the judgment earlier passed by the trial Court and the matter was remanded back to the trial Court for fresh disposal. The learned counsel for the petitioner further submitted that the petitioner has already cross examined the witnesses and has also rebutted the presumption. Subsequently, the respondent is now trying to fill up the lacunae by marking an award, which was passed ex-parte against the petitioner. The learned counsel for the petitioner further submitted that the Court below ought not to have allowed the application and therefore, the order passed by the Court below requires interference.

3. The learned counsel for the respondent submitted that the petitioner wanted to mark the award only to establish the fact that the respondent had provided financial assistance to the petitioner and the petitioner has executed the sale deed only as a security. According to the learned counsel for the respondent, this is in line with the stand taken by the respondent in the complaint. Therefore, the learned counsel submitted that no prejudice will be caused to the petitioner, if PW-1 is recalled and the award is marked, since the petitioner will always have an opportunity to cross examine pw1 and also put questions regarding the relevancy of the arbitration award.

4. This Court has carefully considered the submissions made on either side and the materials available on record.

5. The respondent, who is the complainant before the Court below wants to establish his case, since the petitioner claims to have rebutted the presumption cast against him under Section 139 of the Negotiable Instruments Act. The respondent wants to mark an award of the year 2011 in order to establish the fact that he had taken the same ground that has been taken in the complaint even during the year 2011. The case is on remand and the appellate Court has directed the trial Court to provide sufficient opportunity to the parties and make a fresh disposal of the case. Therefore, the parties will have to be provided all the opportunities in the course of the trial.

6. That apart, as rightly held by the Court below, no prejudice will be caused to the petitioner, since the petitioner can always cross examine the respondent and also question the relevancy of the document sought to be marked in the case. By merely recalling Pw1 and marking document, it does not, in any way, take away the right of the petitioner.

7. This Court does not find any illegality or infirmity in the order passed by the Court below and there are no grounds to interfere with the same. It will be left open to the petitioner to sufficiently cross examine pw1 and also put questions on the document sought to be marked by pw1. It is also left open to the petitioner to question the relevancy of the document sought to be marked.

8. This Criminal Original Petition is disposed of, with a direction to the Court below to complete the proceedings in C.C.No.714 of 2011, within a period of four months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The learned Metropolitan Magistrate,
Fast Track Court No.III,
Saidapet,
Chennai.

+1cc to Mr.M.Deivanandam, Advocate Sr.56618
+1cc to Mr.K.M.Balaji, Advocate Sr.57073

CrI.O.P.No.9769 of 2019
and CrI.M.P.No.5095 of 2019

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srg 08/08/2019

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