

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:02.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.No.15952 of 2019

and

Crl.M.P.No.7949 of 2019

G.Periyasamy

...Petitioner

Vs.

B.Seetharaman

...Respondent

PRAYER:Criminal Original Petition is filed under Section 482 of Cr.P.C., praying to set aside the order passed in Cr.M.P No.2280 of 2019 in S.T.C No.312 of 2015 on the file of the learned District Munsif cum Judicial Magistrate, Pochampalli dated 27.05.2019.

For Petitioners: Mr.K.Thiruvengadam

For Respondent : No Appearance

ORDER

This petition has been filed challenging the order passed by the Court below allowing the application filed under Section 311 of Cr.P.C.

2.The petitioner is facing trial before the Court below for an offence under Section 138 of Negotiable Instruments Act. The complaint was taken cognizance in the year 2015. The trial was concluded and the case was at the stage of final arguments. At that stage, the respondent filed an application under Section 311 of Cr.P.C to reopen and to examine further witnesses on the side of the complainant. This petition was allowed by the Court below on the ground that sufficient opportunity must be given to the complainant to establish his case and that the accused person can always cross examine the witness.

3. The learned counsel for the petitioner submitted that the complainant filed the application under Section 311 of Cr.P.C only with an intention to fill up the lacunae. The learned counsel further submitted that the Court below has allowed the petition as a matter of course, without assigning any reasons for allowing the application in favour of the complainant.

4. The respondent has been served notice and his name has also been printed in the cause list. There is no representation

for the respondent.

5. It is seen from the records that the complaint was taken on file in the year 2015 and the trial was completed and the case was at the stage of final hearing. At that stage, a petition came to be filed by the complainant under Section 311 of Cr.P.C during the month of May 2019. This petition was filed on the ground that the complainant has to examine some more witnesses on his side. The petitioner who is shown as the accused in the complaint, has taken a specific stand that the application itself has been filed only to fill up the lacunae.

6. The Court below without assigning any reason, has allowed the application in a very casual manner, only on the ground that no prejudice will be caused to the petitioner.

7. It is a settled principle of law that the Court dealing with an application under Section 311 of Cr.P.C, must ensure that the recall petition is not filed in a casual manner and the same is not used for the purpose of filling up the lacunae. This Court finds that the order of the Court below is opposed to settled principles of law and therefore, the same is illegal.

8. In the result, the order passed by the Court below in Cr.M.P No.2280 of 2019, dated 27.05.2019 is hereby set aside and accordingly, this Criminal Original Petition is allowed. The Court below is directed to complete the proceedings in S.T.C No.312 of 2015, within a period of two months from the date of receipt of copy of this order. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The District Munsif-Cum Magistrate,
Pochampalli.

+1cc to Mr.K.Thiruvengadam, Advocate sr.66260

Cr1.O.P.No.15952 of 2019
and
Cr1.M.P No.7949 of 2019

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nr 23/09/2019