

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.Nos.15302 & 15234 of 2019
and
Crl.M.P.No.7468 of 2019

1.M/s.Radha Madan Mohan Bricks

Represented by its Partner K.Nagarajan
No.1, Bharathiyar Street,
Subramaniya Nagar,
Salem - 635 005.

2.K.Nagarajan .. Petitioners in both the Crl.O.P.s

Vs.

M/s.Yaswant Agency

Represented by its Proprietor

S.Manivannan

s/o Selvaraju

Door No.163/94. M.Govinda Gounder Thottam,

Narayanapillai street,

Peramanoor,

Salem-636 007.

.. Respondent in both the Crl.O.P.s

Prayer in Crl.OP.No.15302 of 2019: Criminal Original Petition filed under Section 482 of Cr.P.C. to set aside the order of the learned Judicial Magistrate No.3, Salem, Salem District made in Crl.M.P.No.3471 of 2019 in S.T.C.No.241 of 2018 order dated 03.06.2019 in dismissing the petition filed by the petitioners herein under Section 311 Cr.P.C. and restore the said petition on the file of the learned Magistrate.

Prayer in Crl.OP.No.15234 of 2019: Criminal Original Petition filed under Section 482 of Cr.P.C. to set aside the order of the learned Judicial Magistrate No.III, Salem, Salem District made in Crl.M.P.No.6461 of 2018 in S.T.C.No.241 of 2018 order dated 14.02.2019 in dismissing the petition filed by the petitioners herein under Section 91 Cr.P.C.

(In both the Crl.OPs)

For Petitioners : Mr.T.Shanmugam

COMMON ORDER

These petitions have been filed challenging the order passed by the Court below dismissing the application filed under Section 91 of Cr.P.C. to furnish certain original documents and also dismissing the application filed under Section 311 of Cr.P.C. to re-call PW1 for cross examination.

2.It is seen from the records that the petitioners are facing trial before the Court below for an offence under Section 138 of Negotiable Instruments Act. The respondent/complainant was examined as PW1 and 10 documents marked as Exs.P1 to P10. All the documents marked before the Court below are only the certified copies and no original documents were marked. When the case was at the stage of cross examination of PW1, the petitioners filed an application under Section 91 of Cr.P.C. seeking for the production of all the original documents and the same has been dismissed by the Court below. The Court below also dismissed the petition seeking to re-call PW1 for cross examination.

3.The careful reading of the order passed by the Court below reveals the fact that the respondent/complainant has already filed a suit for recovery of money against the petitioners based on the very same transaction and the same is pending in O.S.No.331 of 2017 before the Additional District Judge No.III, Salem. In this suit, all the original documents have been filed and therefore the certified copy of all the documents are obtained and the same was marked in the present complaint through PW1. Therefore, the Court below found that there was no requirement to bring the original documents before the Court and the Court also proceeded to reject the prayer of the petitioners to re-call PW1 for cross examination.

4.The learned counsel for the petitioners submitted that since the presumption is against the petitioners, the petitioners are duty bound to rebut the presumption and for that purpose the petitioners must be given opportunity to cross examine PW1 and all the original documents must be summoned from the civil Court for effective cross examination.

5.This Court has carefully considered the submissions made by the learned counsel appearing for the petitioners and also the materials available on record.

6.This Court finds that the Court below has given cogent reasons as to why the original documents need not be brought for the purpose of cross examination. Admittedly, the certified copies of all the documents have been marked subject to the

objection raised by the petitioners. The original documents are available in the suit filed by the respondent in O.S.No.331 of 2017 against the petitioners with regard to the same transaction. Therefore, the Court below was perfectly right in saying that it is enough if the certified copies are marked and the petitioners can always cross examine the respondent with the certified copies that have been marked before the Court below.

7.However, this Court finds that the petitioners must be given one last opportunity to cross examine PW1 and in the absence of the same they will not able to rebut the presumption. The case is of the year 2018 and therefore one last opportunity must be given to the petitioners.

8.The order passed by the Court below in Crl.M.P.No.6461 of 2018 is hereby confirmed and the order passed by the Court below in Crl.M.P.No.3471 of 2019 is modified. The Court below is directed to re-call PW1 to enable the petitioners to cross examine PW1 with the certified copies that have already been marked as Exs.P1 to P10. The cross examination shall be completed on the same day and no adjournments shall be granted in this regard. If on the date of the presence of PW1, the petitioners fail to cross examine him, the petitioners shall forfeit their right to cross examine PW1 thereafter.

9.Both the Criminal Original Petitions are disposed of with a direction to the Court below to complete the proceedings in S.T.C.No.241 of 2018 within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

vs

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

- 1.The Judicial Magistrate No.3,
Salem, Salem District.
2. -Do- Thro' The Chief Judicial Magistrate
Salem District.

+1cc to Mr.T.Shanmugam, Advocate, SR.No.48483

CrI.O.P.Nos.15302 & 15234 of 2019
and
CrI.M.P.No.7468 of 2019

Kak(17/06/2019)



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