

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.7990 of 2017 &
Crl.M.P.No.5771 of 2017

M.Shanmugam

... Petitioner

Vs.

Saravanan

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the entire records insofar relates to order dated 25.01.2017 passed in C.M.P.No.4233 of 2016 in S.T.C.No.130 of 2011 on the file of the District Munsif cum Judicial Magistrate, Arcot, Vellore District and set aside the same.

For Petitioner : Mr.C.Prakasam

For Respondent : No appearance

O R D E R

This Criminal Original Petition has been filed seeking to set aside the order passed in C.M.P.No.4233 of 2016 in S.T.C.No.130 of 2011 on the file of the District Munsif cum Judicial Magistrate, Arcot, Vellore District, by an order dated 25.01.2017, thereby allowing the petition filed by the respondent/complainant under Section 311 of Cr.P.C. seeking to recall of PW1 to mark the promissory note dated 17.09.2013.

2.The learned counsel for the petitioner would submit that the petition filed by the respondent / complainant is to recall him to examine in respect of pro-note executed by the petitioner that too after five years from the date of cross-examination. Further, he submitted that he no where mentioned about the said pro-note in the complaint in S.T.C.No.130 of 2011. Even then, the learned Judge, considering the facts and circumstances of the case, allowed the petition and permitted him to examine and mark the said promissory note.

3.It is seen that the case is of the year 2011 filed under Section 138 of the Negotiable Instruments Act, as against the petitioner. The promissory note was executed by the petitioner/accused on 02.10.2010, at the time of borrowal of money from the defacto complainant. During the cross-examination of PW1, the complainant has stated that on 02.10.2010, the accused executed the pro-note. On 17.09.2013, during the cross-examination of PW1, he has brought the alleged pro-note to the Court below, however, it was objected by the petitioner/accused. Considering the facts and circumstances of the case, the learned Magistrate allowed the petitioner under Section 311 of Cr.P.C. filed by the respondent/complainant.

4.This Court does not find any illegality or infirmity in the order passed by the Court below. In the result, the Criminal Original Petition is dismissed. However, considering the fact that the case is of the year 2011, the Court below is directed to complete the final proceedings in STC No.130/2011, within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

kal
To

1. The District Munsif cum Judicial Magistrate, Arcot,
Vellore District

2.The Public Prosecutor, High Court, Madras.

3.The Chief Judicial Magistrate, Vellore.

+1cc to Mr.C.Prakasam , Advocate SR.No. 10378

CrI.O.P.No.7990 of 2017 &
CrI.M.P.No.5771 of 2017

A.SK(06/03/2019)