

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :17.07.2019
CORAM
THE HONOURABLE Mr.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.14328 of 2017
and
Crl.M.P.No.9106 of 2017

M.Baskar

... Petitioner

Vs.

Vimala Manoharan @ Vimala

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to set aside the order dated 16.05.2017 made in Crl.Rc.No.27 of 2017 on the file of the Additional Sessions, Magalir Neethi Mandram (Fast Track Court), Erode in C.M.P.No.927 of 2017 on the file of Judicial Magistrate, Fast Track Court No.II, Erode.

For Petitioner : Mr.M.Guruprasad
For Respondent : Mr.C.S.Saravanan

O R D E R

This petition has been filed challenging the order passed by the Court below in exercise of its jurisdiction under Section 379 of Cr.P.C.

2.The petitioner is the complainant in the complaint filed under Section 138 of the Negotiable Instruments Act. The petitioner filed an application under Section 311 of Cr.P.C for recalling P.W.1 for further examination. The petition was allowed by the trial court by imposing costs by order dated 22.02.2017. This order was put to challenge by the respondent before the Additional Sessions, Magalir Neethi Mandram, Fast Track Mahila Court, Erode by filing criminal revision petition under Section 397 of Cr.P.C. This petition was entertained by the court below and the order passed by the trial court was set aside.

3.The learned Counsel for the petitioner submitted that a revision petition is not maintainable against an order passed under Section 311 of Cr.P.C. since it is in the nature of interim order. The learned counsel submitted that there is a clear bar to entertain a Criminal Revision as against interim order under Section 379(2) Cr.P.C.

4.The learned counsel for the respondent submitted that the revision court has considered the entire case on merits and it has applied its mind and passed an order and the same does not require any interference.

5.The order passed by the Court below is liable to be set aside on the simple ground that the revision Court did not have the jurisdiction to entertain the revision against the order passed under Section 311 of Cr.P.C. The order passed under Section 311 of Cr.P.C. is in the nature of interim order and therefore, there is a bar in entertaining the revision as against the interlocutory order under Section 397(2) of Cr.P.C. The Court below did not have the jurisdiction to entertain the criminal revision filed by the respondent and on that ground alone, the order of the Court below is liable to be set aside.

6.In the result, the order passed in Criminal Revision Petition No.27 of 2017 dated 16.05.2017 is hereby set aside and the order passed by the trial Court in C.M.P.No.927 of 2017 is hereby restored. It is made clear that the respondent shall be given sufficient opportunity to cross examine P.W.1 after P.W.1 is recalled and further examined in chief.

7.This Criminal Original Petition is accordingly allowed and the Court below is directed to complete the proceedings in S.T.C.No.421 of 2016 within a period of three months from the date of receipt of copy of this order. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1. The Additional Sessions Judge,
Magalir Neethi Mandram,
Fast Track Court, Erode.
2. The Judicial Magistrate,
Fast Track Court No.II, Erode.

+1cc to Mr.M.Guruprasad , Advocate SR.No. 61008

Cr1.O.P.No.14328 of 2017

and

Cr1.M.P.No.9106 of 2017

A.SK(13/08/2019)