

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

CrI.O.P.No.14920 of 2017

K.Mani

... Petitioner/Accused

Vs.

1.N.Dhandapani

2.A.Krishnamoorthy

.... Respondents/Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to set aside the order dated 23.05.2017 passed in un numbered C.M.P.No. NIL of 2017 in S.T.C.No.3051 of 2010 on the file of Judicial Magistrate, Kangayam and direct the Learned Judicial Magistrate, Kangayam to dispose the same in accordance with law on merits.

For Petitioner : Mr.N.S.Sivaprakash

For Respondents : Mr.C.S.Saravanan

O R D E R

This petition has been filed challenging the order passed by the Court below rejecting the petition filed by the petitioner under Section 340 of Cr.P.C. by an order dated 23.05.2017.

2.The petitioner faced trial for an offence under Section 138 of the Negotiable Instruments Act. During the course of trial, six witnesses were examined on the side of the complainant. It is an admitted case that the petitioner was convicted for the said offence and there is an appeal which is now pending against the judgment passed by the trial Court.

3.In the meantime, the petitioner had to proceed to initiate proceedings against P.W.1 and P.W.6 under Section 340 of Cr.P.C, on the ground that they have given false statement before the trial Court during the pendency of the proceedings. This petition has been rejected by the Court below.

4.The learned Counsel for the petitioner submitted that P.W.1 and P.W.6 have given false evidence before the Court below in the proceedings in S.T.C.No.3051 of 2010. Therefore the petitioner had taken steps to proceed under Section 340 of Cr.P.C. r/w 195 of I.P.C. The learned Counsel submitted that the Court below had rejected the petition on the ground that it is not maintainable and the same will not apply to 138 proceedings.

5.Per contra, the learned counsel for the respondents submitted that the petitioner cannot maintain such petition, in view of the fact that the evidence of P.W.1 and P.W.6 has been relied upon by the trial Court and the petitioner has been convicted. It is now a subject matter of appeal before the Additional District Judge, Dharapuram in C.A.No.62 of 2017. The learned counsel submitted that if the petitioner is permitted to parallelly prosecute the complaint, it will have a very adverse effect on the appeal that is pending before the appellate Court, since the appellate Court will have to necessarily go into the evidence given by each of the witnesses including P.W.1 and P.W.6. Therefore the learned counsel submitted that there is no ground to interfere with the order passed by the Court below.

6.In the considered view of this Court, the petition filed by the petitioner is not maintainable since the stage has not come for the petitioner to maintain such a petition. The evidence of P.W.1 and P.W.6 has been relied upon by the trial Court and their evidence will be relied upon even in the appeal. Under such circumstances, the petitioner cannot be allowed to independently initiate a complaint under Section 340 of Cr.P.C on the ground that P.W.1 and P.W.6 have given false evidence in the proceedings. Such a petition will have a very adverse impact in the appeal that is pending before the Additional District Judge, Dharapuram.

7.This Court does not find any ground to interfere with the order passed by the Court below. If the stage arises for the petitioner to question the evidence given by P.W.1 and P.W.6, at a later point of time, if their evidence is found to be unreliable by the Court below, the petitioner can always revive his right to maintain a petition under Section 340 of Cr.P.C. Till such a situation arises, the petitioner cannot be permitted to parallelly proceed with the complaint under Section 340 of Cr.P.C.

8.In the result, this Criminal Original Petition is dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rst/jas

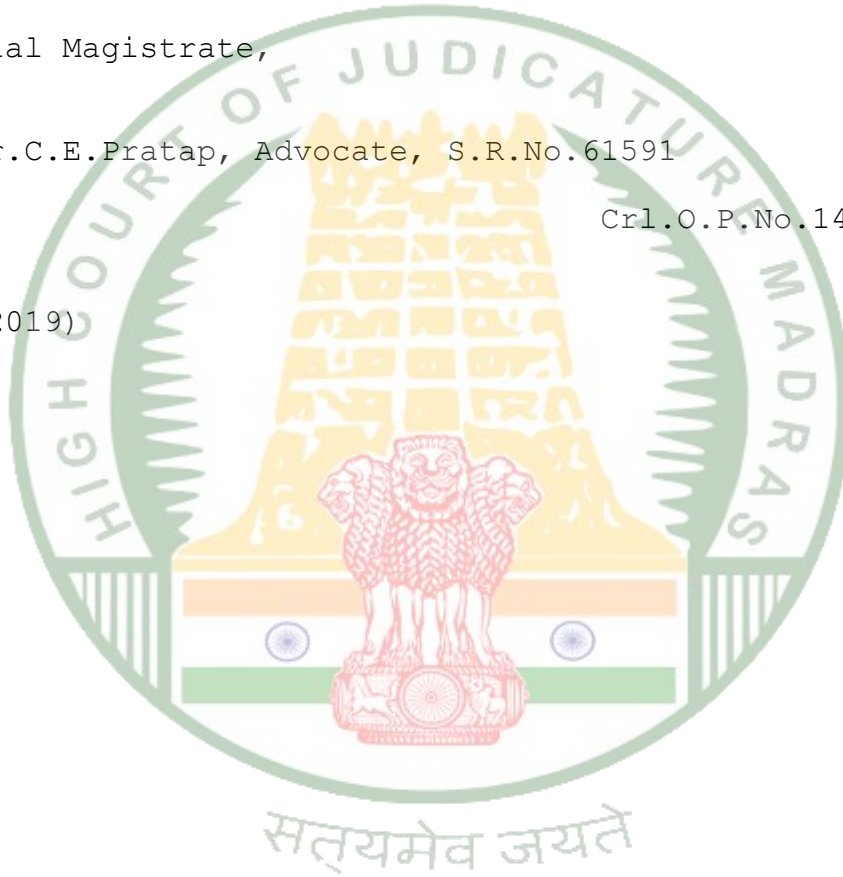
To

The Judicial Magistrate,
Kangayam.

+1cc to Mr.C.E.Pratap, Advocate, S.R.No.61591

Crl.O.P.No.14920 of 2017

(CO)
SP(29/08/2019)



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