

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.27293 of 2017  
in Crl.M.P.Nos.15636 and 15637 of 2017

P.Kathiresan

...Petitioner

-Vs-

The Executive Officer,  
Punjai Puliampatti Municipality,  
Sathiyamangalam Taluk,  
Erode District.

... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records and to set aside the order dated 02.08.2017 passed in the C.M.P.No.2806 of 2017 in C.C.No.293 of 2008 on the file of the learned Judicial Magistrate Court, Sathiyamangalam and allow this petition.

For Petitioner : Mr.R.P.Murugan Raja  
For respondent : Mr.P.Jayanthi  
for M/s.A.S.Thambuswamy

ORDER

This petition has been filed against the order passed by the Court below allowing the application filed under Section 311 of Cr.P.C by the respondent to scrap the evidence of PW.1 and permit the respondent to file a fresh proof affidavit of the complainant. The petitioner is facing trial before the Court below for an offence under Section 138 of the Negotiable Instrument Act. The complaint was taken on file in the year 2008 and it is pending for the last eleven years.

2. The respondent filed a petition before the Court below for scrapping the evidence of PW.1 and to permit the petitioner to examine the witness afresh. This petition was filed on the ground that due to oversight Officer who took charge, subsequently had adduced evidence and therefore his evidence must be scrapped and a fresh proof affidavit must be permitted to be filed on the side of the complainant. This petition was allowed by the Court below on the ground that the petitioner will not be put to prejudice by allowing the petition and the earlier evidence must be scrapped and the respondent must

be permitted to file a fresh proof affidavit of the concerned Executive Officer.

3. Heard, the learned counsel appearing for the petitioner and the learned counsel appearing on behalf of the respondent.

4. The procedure adopted by the Court below is alien to the Code of Criminal Procedure. Once a witness has been examined in chief and he was also cross examined, there is no question of scraping the evidence. The respondent was in a deep slumber right from the year 2008 onwards and all of a sudden woke up in the year 2017 to find out that a wrong person has been examined on the side of the Municipality. For the said mistake, the petitioner cannot be penalised and the petitioner will be put to prejudice if the respondent is allowed to examine a new witness by scraping the earlier evidence.

5. The order of the Court below is totally unsustainable and the Court below ought not to have allowed the application filed by the respondent. The Court below did not properly understand the scheme of a Code of Criminal Procedure and the Evidence Act and there is no provision to scrap the evidence recorded from a witness before the competent Court.

6. In the result, the order passed by the Court below in C.M.P.No.2806 of 2017, dated 02.08.2017, is hereby set aside and this Criminal Original Petition is allowed and the Court below is directed to complete the proceedings in C.C.No.293 of 2017 within a period of two months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate Court, Sathyamangalam.
2. do thro the Chief Judicial Magistrate, Erode.
- 3.The Executive Officer,  
Punjai Puliampatti Municipality,  
Sathiyamangalam Taluk,  
Erode District.

+1cc to Mr.R.P.Murugan Raja , Advocate SR.No. 48448

CrI.O.P.No.27293 of 2017

A.SK(01/07/2019)