



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD).No. 5323 of 2019

and

Crl.M.P(MD) Nos. 3366 & 3367 of 2019

Radhakrishnan

... Petitioner/Respondent/Sole accused

Vs.

T. Paramasivan

... Respondent/Petitioner/Complainant

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the entire records pertaining to the order passed by the learned Judicial Magistrate No.I, Tirunelveli in Cr.M.P. No.7528 of 2018 in S.T.C. No. 123 of 2016 vide order, dated 13.02.2019 and set a side the same.

For Petitioner : Mr.R. Anand

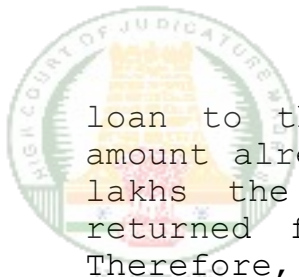
For Respondent : Mr.S.C.Herold Singh

O R D E R

This Criminal Original Petition is filed to set a side the passed by the learned Judicial Magistrate No.I, Tirunelveli in Cr.M.P. No.7528 of 2018 in S.T.C. No. 123 of 2016 vide order, dated 13.02.2019 thereby lying the petition to re-open the case for examination of further witnesses.

2. The learned counsel for the petitioner would submit that the petitioner is accused. The respondent/complainant was examined in full and the matter has been posted for arguments. At this juncture, to fill up the lacuna the respondent/complaint has filed a petition to re-open the witness for examination of further witnesses. It is nothing to fill up the lacuna and without none of the provision under the Code of Criminal Procedure the respondent/complainant has filed this petition, eventhough, the trial Court allowed the petition. He further submitted that while pending this petition, the respondent/complainant filed a petition to recall himself to examine further under Section 311 of Cr.P.C. and which is pending. Therefore, the impugned order passed by the trial Court is not sustainable and it is liable to be set aside.

3. The learned counsel appearing for the defacto complainant would submit that the respondent has preferred a complaint for the offence under Section 138 of Negotiable Instruments Act. He further submitted that during the year 2012, the petitioner has borrowed



loan to the tune of Rs.11,50,030/-and towards part repayment of amount already borrowed by him he issued a cheque for a sum of Rs.2 lakhs the same was presented for collection and the same was returned for the reason that 'Payment stopped by the drawer'. Therefore, he wants to mark some documents to prove his claim and also he wants to examine other witnesses. Hence, he filed an application to reopen the complaint the same was rightly allowed by the learned Magistrate. However, again the respondent/defacto complainant filed a petition under Section 311 of Cr.P.C to recall himself and examine further and which is pending.

4. Heard Mr.R. Anand, learned counsel appearing for the petitioner and Mr. Herold Singh, learned counsel appearing for the respondent.

5. The petitioner is accused. The respondent/defacto complainant filed a complaint under Section 138 of Negotiable Instruments Act as against the petitioner herein. The trial Court has examined P.W.1. While the matter was posted for arguments, the respondent filed a petition to reopen the entire case for examination of further witnesses the same was allowed. Now, it is seen that again the respondent/defacto complainant filed a petition to recall himself to examine further under Section 311 of Cr.P.C which is pending. Therefore, the earlier order passed by the trial Court cannot be sustained in the eye of law. Accordingly, the Criminal Original Petition is liable to be allowed.

6. In view of the above, the Criminal Original Petition is allowed and the order, dated 13.02.2019 passed by the learned Judicial Magistrate No.I, Tirunelveli in Cr.M.P. No.7528 of 2018 in S.T.C. No. 123 of 2016 is set aside and the trial Court is directed to pass an order on merits and in accordance with law. The trial Court is directed to complete the entire trial proceedings, within a period of **Three (3) months** from the date of receipt of copy of the order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

+1 CC to MR.S.C.HEROLD SINGH, Advocate (SR-89351[F] dated 25/09/2019)

Cr1.O.P. (MD) .No. 5323 of 2019
23.09.2019

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