BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 25.09.2019
CORAM
THE HONOURABLE MR. JUSTICE B.PUGALENDHI
CRL.RC(MD)No.247 of 2014
and
MP(MD)No.1 of 2014

M/s.Port City Benefit Fund Limited,
21-D/2, W.G.C.Road, Thoothukudi,
through its Manager
S.Rama Subramanian. : Petitioner/Respondent/Complainant

Vs.

J.Ester Raj : Respondent/Petitioner/Accused

PRAYER : Criminal Revision is filed under Section 397(1) r/w 401 Cr.P.C, against the order dated 18.03.2014 passed in Cr.M.P.No.371 of 2014 in C.C.No.60 of 2013 on the file of the learned Judicial Magistrate (Special Court for Land Grabbing Cases), Thoothukudi, Thoothukudi District , wherein the petition filed by the respondent herein under Section 254(2) Cr.P.C seeking permission to examine the witnesses listed by him.

For Petitioner : Mr.A.Thiruvadi Kumar
For Respondent : Mr.S.Ponsenthil Kumaran

ORDER

This Criminal Revision has been filed as against the order passed by the learned Judicial Magistrate (Special Court for Land Grabbing Cases), Thoothukudi, Thoothukudi District in Cr.M.P.No.371 of 2014.

2. The petition in Cr.M.P.No.371 of 2014 was filed by the accused in C.C.No.60 of 2013 in the proceedings initiated by the petitioner/complainant for the offences under Section 254(2) Cr.P.C, seeking permission to examine the following witnesses on the side of the defence in the complaint pending against him in C.C.No.60 of 2013:-

(i) Thiru. SuriyaMoorthy. S/o.Jeyaraj, CEO(Chief Executive Officer) of the complainant's company;

(ii) Ms. Santhi, the Managing Director of the complainant's Company;

(iii) the Income Tax Officer.

3.The petitioner/complainant is a benefit fund limited registered under the Companies Act and doing financial business and the respondent/accused is one of their clients. The accused has borrowed money from the complainant company and in order to discharge the said liability, issued a cheque bearing No. 188188, dated 16.02.2013 for a sum of Rs.10,00,000/- drawn in Indian Overseas Bank, Eral Branch. The said cheque, on presentation, returned with an endorsement as 'funds insufficient' and therefore, after causing statutory notice as required under the Act, he filed a complaint before the trial Court as against the accused for the offence under Section 138 of the Negotiable Instruments Act in the year 2013 and he has also completed his evidence in the year 2014.

4.On the side of the defence, the respondent/accused filed an application under Section 254 Cr.P.C to examine the witnesses as cited supra. The trial Court, by an order dated 18.03.2014, allowed the petition filed under Section 254 Cr.P.C and permitted the respondent /accused to examine the witnesses. Aggrieved over the same, the present revision has been filed.

5.Heard Mr.A.Thiruvadi Kumar, learned counsel for the petitioner and Mr.S.Ponsenthil Kumaran, learned counsel for the respondent.

6. Mr.A.Thiruvadi Kumar, learned counsel has contended that no reason has been assigned in the petition for examining three persons as witnesses. This petition has been filed only to protract the trial and the learned Magistrate, without assigning any reason, mechanically allowed the petition. He also stated that he is not having any objection in examining Thiru. SuriyaMoorthy. S/o.Jeyaraj, CEO(Chief Executive Officer) of the complainant's company. However, he reserved his objection with regard to the other two witnesses, namely, Ms.Santhi, Managing Director of the complainant's Company and the Income Tax Officer. The said Santhi, Managing Director of the Company has given power of attorney, which was accepted by the trial Court and was also permitted to proceed with the complaint through the power of attorney. The power of attorney has also filed proof affidavit in this case and she was also examined in the case. While so, there is no necessity to examine the said Santhi. According to the counsel for the complainant, the Chief Executive Officer, was in charge of the company on that day and therefore, when they are not having any objection with regard to the examination of the Chief Executive Officer, there is no necessity for examining the Managing Director and other Directors as witnesses in this case.

7.Insofar as the Income Tax Officer is concerned, even assuming without admitting that the accounts have not been properly maintained by them and it has not been properly stated in the return filed by them under the Income Tax Act, it would not vitiate the present proceedings pending before the trial Court.

8. Per contra, the learned counsel for the respondent/accused would submit that P.W.1, in his evidence, has stated that the entire transaction was known to Thiru.Suriyamurthy, Chief Executive Officer

and therefore, his examination is very vital in this case. Apart from that this complaint has been filed on behalf of the Managing Director, Santhi and therefore, the examination of Santhi is also necessary. It is also seen from the evidence of P.W.1 that the entire transaction has been recorded in the income tax statement filed before the Income Tax Department and therefore, it is very necessary to examine the Income Tax Officer also.

9.This Court paid its anxious consideration to the rival submissions and also to the available materials.

10. Section 254 (2) of Cr.P.C empowers the Court to issue summons to any witness directing him to attend or to produce any document or other thing, if he thinks fit, on the application of the prosecution or the accused. It appears, the Magistrate, without any reasoning, but by quoting the provision, has allowed the petition.

11. According to the learned counsel for the petitioner, no reason has been assigned in the petition filed by the respondent/accused for examining three persons as witnesses and this petition has been filed only to protract the trial. The learned Magistrate has also mechanically allowed the petition, without assigning any reason. If fact, learned counsel for the petitioner submitted that, he is not having any objection in examining Thiru.Suriyamoorthy. S/o.Jeyaraj, CEO (Chief Executive Officer) of the complainant's company.

12. The case of the respondent/accused is that since P.W.1 has stated in his evidence that the entire transaction was known to the CEO/Suriyamurthy, his examination is very vital. Be that as it may, since the petitioner/complainant has conceded for examining the CEO, namely, Thiru. Suriyamoorthy, no interference is required from this Court insofar the examination of the CEO is concerned.

13. Apart from the CEO, the respondent/accused has sought for examining the Managing Director, Santhi and the Income Tax Officer as witnesses. Though the respondent/accused has not stated any reasons for examining these witnesses before the trial Court in the petition filed under Section 254(2) Cr.P.C, he has now stated before this Court that since the complaint has been filed on behalf of the Managing Director, she has to be examined and that since the entire transaction has been recorded in the Income Tax Statement, the Income Tax Officer has to be examined.

14.This Court is not inclined to accede the reasons assigned by the respondent/accused for the reason that though the complaint was filed on behalf of the Managing Director, she has already executed a power of attorney and the same has also been accepted by the trial Court. Based on the strength of this power of attorney document, the complainant has filed the complaint. Moreover, it is the specific stand of the petitioner/complainant that the Chief Executive Officer is in charge of the company's day to day affairs, and they are not having any objection for examining the Chief Executive Officer.

15. Insofar as the plea to examine the Income Tax Officer is concerned, as rightly contended by the learned counsel for the petitioner, even if there are any defects in the Income Tax statement filed by them before the Department, it would not vitiate the present proceedings pending before the trial Court. Therefore, this Court is of the view that the examination of the Income Tax Officer in this case is not warranted.

16.For the foregoing reasonings and discussions, this Court is inclined to interfere with the impugned order and the order of the trial Court as regards the examination of the Managing Director and the Income Tax Officer stands set aside. The respondent/accused shall examine the Chief Executive Officer, namely, Thiru. Suriyamoorthy. Since the cause of action in this case has arose in the year 2013, the trial Court is directed to expedite the proceedings and conclude the same as expeditiously as possible.

17.With the above modifications, this Criminal Revision Case stands partly allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

das

To

The Judicial Magistrate
(Special Court for Land Grabbing Cases),
Thoothukudi, Thoothukudi District.

Copy to: The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.(2 Copies)
+1 CC to M/s.A.THIRUVADI KUMAR, Advocate (SR-89660[F] dated 26/09/2019)

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and
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KK(30.07.2020) 4P 5C