



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : **06.09.2019**

CORAM:

WEB COPY

THE HON'BLE MR.JUSTICE **N. ANAND VENKATESH**

Crl.O.P.No.11417 of 2017

and

Crl.M.P(MD)No.7846 of 2017

S.Kannan

... Petitioner / Respondent/accused

Vs.

R.Jothiraman

...Respondent /Petitioner/ complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records and set aside the order dated 24.04.2017 passed in Cr.M.P.No.56 of 2017 in S.T.C.No.722 of 2013 on the file of the learned Judicial Magistrate No.VI, Tiruchirappalli, Tiruchirappalli District.

For Petitioner : Mr.A.Thiruvadikumar

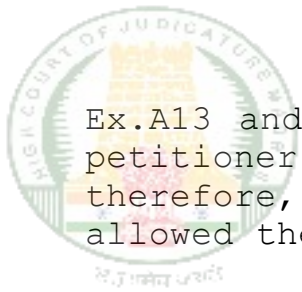
For Respondent : No Appearance

O R D E R

This petition has been filed challenging the order passed by the Court below allowing the application filed by the respondent under Section 311 of Cr.P.C. to issue summons to the wife of the petitioner to examine her as a witness.

2. The petitioner / accused is facing trial before the Court below for an offence under Section 138 of Negotiable Instruments Act. The complaint was taken on file in the year 2013. The proceedings were in the final stages of arguments and at that point of time, the respondent has chosen to file an application to issue summons to the wife of the petitioner to examine her as a witness. The Court below has allowed the application on the ground that the wife of the petitioner has to be examined in order to make her testify with regard to Ex.A12 and Ex.A13, which are the statutory notice and reply notice exchanged between parties.

3. The learned counsel for the petitioner / accused submitted that Ex.A12 and Ex.A13 were already marked on the side of the respondent / complainant. The statutory notice was issued to both the petitioner and his wife and the reply notice was given on behalf of the petitioner and his wife. The petitioner alone was made as an accused in this case. The learned counsel submitted



Ex.A13 and there is absolutely no reason to call the wife of the petitioner to be examined as a witness. The learned counsel, therefore, submitted that the Court below ought not to have allowed the application at the fag-end of the proceedings.

4. The respondent has been served notice and his name has been printed in the cause list. There is no representation for the respondent.

5. This Court has carefully considered the submissions made by the learned counsel for the petitioner and the materials available on record.

6. This Court is in complete agreement with the submissions made by the learned counsel for the petitioner. Admittedly, the 138 complaint was filed only against the petitioner. The respondent did not choose to call the wife of the petitioner as a witness right through the proceedings. When the case was at the stage of final arguments, an application came to be filed by the respondent seeking to call the wife of the petitioner as a witness only on the ground that she has to be examined with regard to Ex.A12 and Ex.A13. Ex.A12 is the statutory notice, which was issued in the name of both the petitioner and his wife and Ex.A13 was the reply notice given on behalf of both of them. The respondent did not choose to call the wife of the petitioner as a witness for nearly four years after the complaint was instituted and this Court does not find any reason as to why the wife of the petitioner should be called as a witness in this case. The Court below ought not to have allowed the application at the fag-end of the proceedings.

7. In the result, the order passed by the Court below in Crl.M.P.No.56 of 2017, dated 24.04.2017 is hereby set aside. Accordingly, this Criminal Original Petition is allowed and the learned Judicial Magistrate No.VI, Tiruchirappalli, Tiruchirappalli District is directed to complete the proceedings in S.T.C.No.722 of 2013, within a period of two months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)



1.The Judicial Magistrate No.VI, Tiruchirappalli,
Tiruchirappalli District.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.A.THIRUVADI KUMAR, Advocate (SR-85676[F] dated
06/09/2019)

CrI.O.P.No.11417 of 2017
and
CrI.M.P(MD)No.7846 of 2017
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