



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.09.2019

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P. (MD)No.3808 of 2017

and

CRL.MP(MD)Nos.2806 & 2807 of 2017

A.Dinakar

... Petitioner/Petitioner/
Accused

Vs.

Kezhson

... Respondent/Respondent/
Defacto Complainant

PRAYER:- Petition filed under Section 482 of Criminal Procedure Code, to set aside the order dated 09.03.2017 made in Crl.M.P.(MD)No.3333 of 2016 in C.C.No.1 of 2012 on the file of Fast Track (Magistrate Level) No.II, Nagercoil.

For Petitioner : Mr.C.Jeganathan

For respondent : Mr.Puhazh Gandhi

ORDER

This petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioner under Section 311 Cr.P.C to reopen the case for cross examination of witnesses on the side of the defence./

2.The petitioner is facing trial before the Court below for an offence under Section 138 of Negotiable Instruments Act. The complaint was filed in the year 2010 and P.W.1 & P.W.2 were examined in chief in the year 2010. Thereafter, the petitioner filed an application under Section 311 of Cr.P.C and the same was allowed and pursuant to the same, the petitioner cross examined both the witnesses.

3.The case thereafter got transferred to the Fast Track (Magistrate level) No.II, Nagercoil and the complainant was again examined in chief on 31.01.2013 and he was cross examined on 05.02.2013. The Bank Manager was examined as P.W.2 on 06.03.2013 and he was also cross examined by the petitioner.



4.The petitioner was questioned under Section 313 of Cr.P.C and he initially stated that there are no witnesses to be examined on the side of the defence. Thereafter, he filed a petition for examination of witnesses on the side of the defence and the same was allowed. Since, the petitioner did not cross examine any one, on the side of the defence, the evidence was closed and the case was posted for arguments.

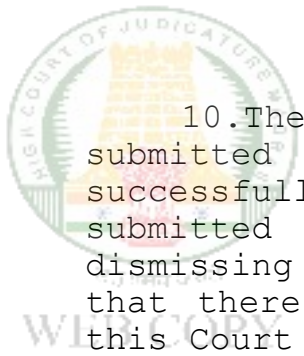
5.The respondent/complainant argued the case on 03.09.2013 and the case was posted for arguments on the side of the petitioner/accused. Even at that stage, the petitioner has filed a petition under Section 311 of Cr.P.C to recall P.W.2 and the same was allowed and P.W.2 was again cross examined in detail on 11.10.2013. The petitioner filed a petition again to reopen the case on 11.11.2013 and it was allowed on 18.11.2013.

6.Thereafter, the petitioner did not appear before the Court below and therefore, bailable warrant was issued on 16.12.2013 and it was recalled on 11.07.2014. Even, thereafter, the petitioner did not proceed to argue the case. He filed a memo that there is a possibility of a settlement between the parties and therefore, the Court below entertained the memo and waited till October 2016. Since, no settlement was forth coming, the case was posted for the arguments of the petitioner.

7.At this stage, the petitioner has chosen to file one more application to reopen, in order to examine witnesses on the side of the defence.

8.The Court below has dismissed the application on the ground that sufficient opportunities were given to the petitioner for examining witnesses on the side of the defence and the case is being prolonged from the year 2010 onwards. The Court below also found that the petitioner is attempting to drag on the proceedings endlessly and therefore, refused to entertain the application filed under Section 311 of Cr.P.C.

9.The learned counsel for the petitioner submitted that there were some subsequent settlements which happened during the pendency of the complaint. Another complaint that was filed in C.C.No.3 of 2012 between the same parties was settled out of the Court and it was dismissed on 12.09.2015. In spite of the settlement, the respondent wanted to proceed further with the present complaint and therefore, the petitioner wanted to bring to the knowledge of the trial Court about the subsequent settlement. The learned counsel submitted that the petitioner does not intent to drag on the proceedings and he only wants to place on record, the subsequent settlement that took place between the parties and which will have a bearing in the pending proceedings.



10.The learned counsel appearing on behalf of the respondent submitted that the petitioner has dragged on the proceedings successfully from the year 2010 onwards. The learned counsel further submitted that the Court below has given cogent reasons for dismissing the application filed under Section 311 of Cr.P.C and that there is no ground to interfere with the same and requested this Court to dismiss the present petition.

11.This Court has carefully considered the submissions made on either side and the materials available on record.

12.This Court is in agreement with the reasons that they have been given by the Court below while dismissing the application filed under Section 311 of Cr.P.C and this Court does not find any illegality or infirmity in the order passed by the Court below. The petitioner had filed a memo in the year 2014, on the ground that there is a possibility of settlement between the parties and the Court below waited for the settlement to happen till October 2016. Since, no settlement was reported, the Court below had no other option except to proceed further with the case.

13.If really there was any settlement between the parties in the connected proceedings in C.C.No.3/2012 in the year 2015, nothing prevented the petitioner from bringing it to the notice of the Court below immediately.

14.Even, in the application that was filed before the Court below under Section 311 of Cr.P.C, the petitioner has not stated anything with regard to any settlement that took place between the parties during the pendency of the complaint. A careful reading of the affidavit only reveals that the petitioner wants to establish the fact that the complainant did not complete the construction work and therefore there was no legally enforceable debt in favour of the complainant and therefore, the cheque that is the subject matter of the present complaint, could not have been given towards the said liability.

15.This is the ground, which has already been dealt in detail in the cross examination while P.W.1 was in the witness box. The ground raised in this petition and the grounds that were raised in the application that was filed before the Court below under Section 311 of Cr.P.C, is completely different. Therefore, the Court below was right in considering the averments that were made in the affidavit filed in support of the application and to come to the conclusion that the application itself has been filed only with a view to drag on the proceedings.

16.This Court does not find any ground to interfere with the order passed by the Court below and therefore, the present Criminal Original Petition is liable to be dismissed. There shall be a



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CRL.O.P.(MD)No.3808 of 2017

of 2012 within a period of two months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar

To

1. The Fast Track (Magistrate Level) No.II,
Nagercoil.

CRL.O.P. (MD)No.3808 of 2017

and

CRL.MP (MD) Nos.2806 and 2807 of 2017

04.09.2019

DSS

MS/30.09.2019/4P.2C