



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 04.09.2019

CORAM:

WEB COPY

THE HON'BLE MR.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.8318 of 2017
and
Crl.M.P(MD)No.5636 of 2017

N.Abimannan Karuppasamy ... Petitioner/Petitioner/Complainant

Vs.

A.Sankara Narayanan ...Respondent/Respondent/Accused

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records and set aside the order dated 26.05.2017 passed in Crl.M.P.No.633 of 2017 in S.T.C.No.20 of 2013 on the file of the learned Judicial Magistrate / Fast Track Court, Srivilliputhur, Virudhunagar District.

For Petitioner : Mr.A.Thiruvadikumar

For Respondent : Mr.J.Jeyakumaran

O R D E R

This petition has been filed challenging the order passed by the Court below dismissing the application U/s.311 of Cr.P.C. to recall PW1 and to mark certain documents.

2.The petitioner is the complainant before the Court below and he has filed a complaint against the respondent for an alleged offence U/s.138 of Negotiable Instruments Act. The complainant had examined himself as PW1 and had also marked certain documents. He was cross-examined and thereafter, the evidence on the side of the complainant was closed. The respondent was questioned U/s.311 of Cr.P.C and the case ultimately reached the stage of final arguments.

3. At this stage the petitioner / complainant filed an application U/s.311 of Cr.P.C. to recall PW1 for the purpose of marking certain bank statements. This application was filed on the ground that the complainant wants to establish the fact that he had sufficient financial wherewithal to give loan to the respondent during the relevant point of time.

4. The Court below dismissed the application on the ground that



already the income tax returns for the year 2012 has been marked before the Court below and the income of the complainant is clearly reflected in the returns and therefore, there is

no requirement to recall PW.1 to enable him to mark the bank statements. The Court below came to a conclusion that the complainant is attempting to drag on the proceedings by filing one application after another.

5. The learned counsel for the petitioner submitted that the main defence that has been taken by the respondent before the Court below is that the petitioner did not have the financial capacity to give a loan to the tune of Rs.3,00,000/-. The learned counsel submitted that the income tax returns was already marked as a document before the Court below as Ex.D3. Apart from the same, the petitioner also wants to mark the bank statements in order to substantiate his case that the complainant was having the financial capacity to give a loan to the accused person. The learned counsel submitted that a fair opportunity must be given to the complainant to establish this fact and it will always be open to the accused person to cross-examine the complainant.

6. The learned counsel appearing on behalf of the respondent submitted that the petitioner has been filing one application after another and the case is pending from the year 2013 onwards. The learned counsel submitted that by marking the bank statements, no new fact is going to be established since the income tax returns that has already marked as Ex.D3, clearly reflects the income of the petitioner. Therefore there is no ground to interfere with the order passed by the Court below.

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

8.The petitioner as the complainant wants to establish the fact that he has the financial capacity to grant loan to the respondent to the tune of Rs.3,00,000/-. It is true that the income tax returns for the year 2012 has already been marked as Ex.D3. However, no prejudice is going to be caused to the respondent, if the petitioner is permitted to mark the bank statements. It will only further give a clarity regarding the income that was available with the petitioner, during the relevant point of time.

9. The respondent can always cross-examine the petitioner and can also put questions on the bank statements that is sought to be marked through PW.1.

10. In view of the above, the order passed by the Court below in Crl.M.P.No.633 of 2017, dated 26.05.2017, is hereby set-aside and the Court below is directed to permit PW.1 to be recalled for the purpose of marking bank statements. The respondent shall be given



sufficient opportunity to cross examine PW.1.

11. In the result, this Criminal Original Petition is allowed and the learned Judicial Magistrate / Fast Track Court, Srivilliputhur, Virudhunagar District, is directed to complete the proceedings in S.T.C.No.20 of 2013, within a period of one month from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

The Judicial Magistrate / Fast Track Court,
Srivilliputhur, Virudhunagar District.

+1 CC to M/s.J. JEYAKUMARAN, Advocate (SR-85181[F] dated 04/09/2019

+1 CC to M/s.A. THIRUVADI KUMAR, Advocate (SR-85196[F] dated
05/09/2019)

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