

HONOURABLE JUSTICE G.SRI DEVI

CRIMINAL PETITION No. 6873 of 2019

ORDER:

The present Criminal Petition is filed by the petitioner/accused under Section 482 of Cr.P.C., seeking to quash the order, dated 18.10.2019 passed in CrI.M.P.No.3221 of 2019 in C.C.No.620 of 2016 on the file of the Additional Judicial Magistrate of First Class at Kalwakurthy, wherein and whereunder, the petition filed under Section 311 of Cr.P.C. to recall PWs.1 and 2 for further cross-examination was dismissed.

The facts of the case in brief are that the 2nd respondent/complainant filed C.C.No.620 of 2016 against the petitioner/accused for the offence punishable under Section 138 of the Negotiable Instruments Act. In the above said C.C., the evidence of the 2nd respondent/complainant was completed. At that stage, the petitioner/accused filed CrI.M.P.No.3221 of 2019, under Section 311 Cr.P.C., to recall P.Ws.1 and 2 for further cross-examination, stating that during earlier cross-examination, the Counsel for the petitioner/accused could not elicit the truth regarding the source of funds, income capacity and legally enforceable debt. It is further stated that the petitioner/accused came to know that the 2nd respondent/complainant filed another case against one Kavitha i.e., C.C.No.619 of 2016, which was also covered by the self same alleged debt and he is not aware about the pendency of the said C.C. It is also stated that the 2nd respondent/complainant has been multiplying

the cause of action by filing frivolous cases against the petitioner/accused and trying to mislead the Court by suppressing material facts about the legally enforceable debt. The 2nd respondent/complainant filed counter stating that the case in C.C.No.619 of 2016 is not having any relevance or connection to the present case. The petitioner/accused had already done lengthy cross examination of P.W.1 on all aspects of the case including the points on which he is filing the present recall petition. It is also stated that the petitioner/accused admitted the liability and filed a memo to compromise the matter, but later he turned around and contesting the matter. It is further stated that P.W.1 is old aged person having more than 80 years and the petitioner/accused cross-examined him after taking sufficient time. The present petition is filed only to drag on the matter and to fill up the lacunae of his case. After considering the rival submissions, the trial Court dismissed the said petition. Aggrieved by the same, the present Criminal Petition is filed.

Heard learned Counsel for the petitioner/accused, learned Additional Public Prosecutor for the 1st respondent-State and learned Counsel for the 2nd respondent/complainant.

Learned Counsel for the petitioner/accused would submit that the learned Magistrate committed an error in dismissing the petition without considering the merits of the petition; that the learned Magistrate failed to see that no prejudice would be caused if P.Ws.1 and 2 recalled and the Magistrate ought to have given an opportunity

to the petitioner/accused. He further submits that it is the right of the petitioner/accused to cross-examine P.Ws.1 and 2 upon the new facts about the alleged legally enforceable debt and that the petitioner/accused undertakes to cross-examine them without causing any further delay. It is also submitted that the Court is empowered to recall any witness at any stage.

Per contra, the learned Counsel for the 2nd respondent/complainant, opposed the relief sought for in the petition and supported the impugned order.

From a perusal of the material on record, it transpires that in the petition filed under Section 311 of Cr.P.C., the petitioner/accused stated that though he took a plea that the 2nd respondent/complainant does not have the source of income and has no capacity to lend such huge amount, but during the earlier cross-examination, the Counsel for the petitioner/accused could not elicit the truth regarding the source of funds, income capacity and legally enforceable debt and also filing of another case i.e., C.C.No.619 of 2016 by the 2nd respondent/complainant. Nothing has been stated in the petition except the above said statement. In fact, the learned Magistrate, while dismissing the petition, specifically observed that the matter was posted on 11.04.2018 for cross-examination of P.W.1 and after taking number of adjournments, the Counsel for the petitioner/accused cross-examined P.W.1 on 24.04.2019 and that he put a question relating to the earnings of P.W.1 and the source of

income and also about the joint agreement made by P.W.1, Kavitha and the petitioner/accused and the same was denied by P.W.1. It is further observed that P.W.2 was also cross-examined at length and the case in C.C.No.619 of 2016 is completely different to the present cheque in issue. It was also observed that the petitioner/accused himself admitted when he filed a petition under Section 70 (2) of Cr.P.C. that he paid Rs.2,00,000/- to the 2nd respondent/complainant and he will settle the matter out of Court by paying remaining balance amount within one month and the same was marked as Ex.P9. Therefore, the impugned order appears to be based on sound reasonings and I do not find any material irregularity or illegality in the order passed by the Magistrate.

In the result, the Criminal Petition is dismissed. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE G.SRI DEVI

31.12.2019

Gsn.