

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2020

CORAM

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.22458 of 2015

M.P.No.1 of 2015

M/s.Adarsh Electronics Appliance Division,
Represented by its Proprietor,
Mahendra Kumar Lodha,
No.56/3, Jermaiah Road,
Vepery, Chennai - 600 007

...Petitioner/Petitioner/Complainant

Vs.

OM PRAKASH,
Prop. Of M/s.Kay Kay Medicals,
No.26, Sundaram Pillai Lane,
Purasaiwalkkam,
Chennai -600 007.

...Respondent/Respondent/Accused

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in Crl.M.P.No.1252/2014 in C.C.No.13491 of 2008 on the file of the Metropolitan Magistrate, Fast Track Court -II, Egmore, Chennai and set aside the same.

For Petitioner : Mr.K.Selvarangan

For Respondent : Mr.G.K.R.Pandiyan

ORDER

This Criminal Original Petition has been filed to set aside the order dated 11.11.2014 made in Crl.M.P.No.1252/2014 before the Metropolitan Magistrate, Fast Track Court -II, Egmore, Chennai.

2. The gist of the case is as follows :

(i) The petitioner is the complainant, who filed a private complaint against the respondent/accused for the offence under Section 138 of Negotiable Instruments Act, which was taken on file in C.C.No.13491 of 2008. The case was initially filed before the

Metropolitan Magistrate, Egmore, Chennai on 23.07.2008. Thereafter, the same was transferred to the file of the Metropolitan Magistrate, Fast Track Court -II, Egmore, Chennai on 02.04.2012.

(ii) The petitioner, one Mahendra Kumar Lodha was examined as P.W.1 on 07.06.2012, but he was not cross examined immediately. After, closing the evidence on the side of the complainant, the accused was examined under Section 313 of Criminal Procedure Code on 20.6.2012. Thereafter, based on the recall petition filed by the accused, the petitioner was cross examined on 05.06.2014 and 23.05.2014, respectively.

(iii) Thereafter, the petitioner filed a petition in CrI.M.P.No.1252 of 2014 under Section 311 of Criminal Procedure Code, to recall P.W.1 and to examine the Bank Managers of H.D.F.C Bank Ltd., Anna Nagar, Chennai and UCO Bank, Purasawalkkam, Chennai. The Trial Court dismissed the said petition by giving a finding that as per Section 146 of Negotiable Instruments Act, the Bank slip or memo having thereon official mark denoting that the cheque has been dishonoured, presume the fact of dishonour of such cheque, unless and until such fact is disproved. Further, the Trial Court had given a finding that P.W.1 was cross examined thoroughly and it is not necessary to examine him further.

3. The contention of the learned counsel for the petitioner is that the finding of the lower Court is not proper. He further submitted that the petitioner had questioned the return of the cheque and Bank transactions and hence, it is necessary for recalling the witnesses of Branch Managers of H.D.F.C Bank and UCO Bank, to prove the transactions between the petitioner and the respondent. The accountant, who is also a Chartered Accountant of the complainant's firm, had issued a certificate, which has to be marked and he is also the author of the ledger accounts.

4. The learned counsel for the respondent/accused submitted that the said case was filed in the year 2008 and P.W.1 was examined in chief in the year 2012. Thereafter, the respondent was examined under Section 313 of Criminal Procedure Code. He further submitted that cross examination of P.W.1 was conducted in the year 2014 and now only to fill up the lacuna in the evidence, the petitioner has filed this petition. Moreover, he further submitted that the petitioner has been facing this case from the year 2008 and if this petition is allowed, it would get delayed further.

5. Considering the rival submissions made by the learned counsel on either side and on perusal of the materials available on record, it is seen that the petitioner has been examined in Chief in the year 2012, thereafter, the respondent was examined under Section 313 of Criminal Procedure Code. The petitioner was recalled and cross examined only in the year

2014. Now, the petitioner wants to clarify certain aspects in his evidence, hence, his examination becomes necessary. The petitioner is the complainant, who filed a private complaint and it is imperative for him to bring forth the best evidence available with him. Further, the respondent apart from purchasing materials had also taken loan, which is evident from his ledger accounts maintained by the Accountant/Chartered accountant. As per Negotiable Instruments Act, the Bank slips are primary evidence and there is no dispute with regard to the same. But to arrive a decision, recalling and examining the witnesses are imperative and the accused would also be given opportunity to cross-examine the witnesses and hence, no prejudice would be caused to him. Therefore, filling of lacuna in this case does not arise.

6. In view of the above, this Court finds that the order of the Trial Court is liable to be set aside with regard to recall of P.W.1 and examination of Accountant/Chartered Accountant in this case. Accordingly, the order of the trial Court is set aside to this extent :

(i) P.W.1 is permitted to be recalled for further examination and if any documents marked, the advance copy is to be served to the respondent/accused.

7. Further, it is submitted that the Trial Court had adjourned the case to 04.11.2020, citing the pendency of this case and this long adjournment is unwarranted. The trial Court to advance the hearing date of the case, on receipt of a copy of this order. The learned counsel for the petitioner as well as the respondent undertook to inform their respective clients about the case to be taken on earlier date before the Lower Court. Further, taking into consideration the fact that the case is pending from the year 2008, the Trial Court shall complete the trial within a period of three months from the date of receipt of a copy of this order.

8. With the above directions, the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Metropolitan Magistrate,
Fast Track Court -II,
Egmore,
Chennai.

CrI.O.P.No.22458 of 2015
and M.P.No.1 of 2015

MR (CO)
RN (09/11/2020)



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