

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.02.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

CRL.O.P.No.19719 of 2019

Mohan ... Petitioner/Petitioner/Accused

Vs.

A.Thandapani ...Respondent/Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 04.07.2019 made in CMP.No.483 of 2019 in C.C.No.117 of 2017 on the file of the Judicial Magistrate, Arakkonam.

For Petitioner : Mr.E.C.Ramesh

O R D E R

This petition has been filed by the accused to set aside the order passed by the Judicial Magistrate, Arakkonam in CMP.No.483 of 2019 in C.C.No.117 of 2017 dated 04.07.2019.

2. In the last hearing i.e., on 24.01.2020, M/s.R.Karthikeyan and R.Bharanidharan have submitted that they already filed vakalat for the respondent vide SR.No.5396 of 2019. Hence, the Registry was directed to verify if any such vakalat was filed and that should be restored to file and the name of the counsel should be printed in the cause-list.

3. Today (18.02.2020), when this matter came up for hearing, no representation for the respondent. The Registry has made an endorsement that the said vakalat was returned on 30.08.2019 itself. Further, the name of the respondent also printed in the cause-list, but, the respondent has not appeared either in person or through counsel. Hence, after hearing the learned counsel for the petitioner and perusing the materials filed by the petitioner, an order is being passed in this petition.

4. The learned counsel for the petitioner has submitted that the respondent herein has filed a private complaint under

Section 138 of the Negotiable Instruments Act stating that the petitioner herein has borrowed a sum of Rs.5,00,000/- from him and to discharge the said debt, the petitioner has issued a cheque for Rs.5,00,000/-. He further submitted that actually, the petitioner has not borrowed any amount from the respondent, on the contrary, he borrowed a sum of Rs.2,00,000/- from one Pandian who is respondent's uncle. He further submitted that the said Pandian was retired as Inspector of Police. He further submitted that a complaint against the said Pandian was filed before the Commissioner of Police, Chennai city and the said complaint was forwarded to the Inspector of Police, Vepery Police Station. Based on the said complaint, one Tmt.Lalitha, the Sub Inspector of Police, of Vepery Police Station has conducted an enquiry with the petitioner and also with the said Pandian and at that time, a settlement was arrived that the petitioner has to pay a sum of Rs.2,15,000/- and the said Pandian has to receive the said amount. The said Pandian also has agreed to receive the said amount, but, he insisted to execute a document for a sum of Rs.5,00,000/- and hence, the matter was not settled finally. He further submitted that the said Sub Inspector of Police was examined before the trial court as D.W.2 and she also deposed the said fact, but, she was not cross-examined by the respondent. He further submitted that at the time of said enquiry, the petitioner has recorded the said conversation in his cell phone and subsequently copied in a C.D and to prove the aforesaid conversation, the petitioner has filed a petition before the trial court in CMP.No.483 of 2019 seeking permission to mark the said CD, but, the trial court has dismissed the said petition by saying that the petitioner has not produced the cell phone and also the certificate as per Section 65-B of the Evidence Act. He further submitted that the petitioner is ready to produce the said cell phone and also the certificate as required under Section 65-B of the Evidence Act and therefore, he requests to direct the trial court to give one more opportunity to the petitioner to produce the cell phone and also the aforesaid certificate.

5. Considering the aforesaid submissions, the order passed by the learned Judicial Magistrate in CMP.No.483 of 2019 in C.C.No.117 of 2017 dated 04.07.2019 is set aside. The matter is remitted back to the trial court. The trial court is directed to give 15 (Fifteen) days time for producing the concerned cell phone, C.D and also the certificate as required under Section 65-B of the Evidence Act. If the petitioner complied with the aforesaid directions within the aforesaid time, the Magistrate has to allow the said petition and give one more opportunity to the petitioner to adduce evidence and mark the aforesaid CD and also the certificate and dispose of the case in accordance with law.

6. With the aforesaid directions, this Criminal Original Petition is disposed of.

Sd/-
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

Vv

To

1. The Judicial Magistrate,
Arakkonam.

2. The Public Prosecutor,
Madras High Court,
Chennai.

+1cc to Mr.E.C.Ramesh, Advocate SR.No.14333

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MR (CO)
GMY (20/02/2020)