

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2020

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

Crl OP.No.20367 of 2020

and

Crl. M.P. Nos.8510 & 8511 of 2020

K. Sunderrajan
Proprietrix: Euro Petroleum
S/o. Krishnasamy
92, Kuttakkattuvalasu
Pandipalayam Road
Elumanthur Post
Erode 638 104 ...Petitioner

Vs.

P. Gunasekaran
S/o. Palanisamy ...Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to pass an order to call for the records in respect of the impugned order dated 21.02.2020 of the learned Judicial Magistrate (Fast Track Court No. II) at Erode, in CMP No.7979/2019 in S.T.C. No.515/2017 and set aside the same.

For Petitioner : Mr. A. Thirumaran

ORDER

Assailing the order dated 21.02.2020 in CMP Nos. 7978 & 7979 of 2019 in S.T.C. No.515/2017 on the file of the Judicial Magistrate (Fast Track Court No. II), Erode, the petitioner/accused has preferred this Criminal original Petition.

2. The CMP Nos. 7978 & 7979 of 2019 have been filed by the petitioner/accused seeking to reopen and permit the petitioner to examine the witnesses 1) Balasubramaniam and 2) the postman, Ganapathipalayam Post Office on his side to establish the tenancy of the witness Suresh under the abovesaid Balasubramaniam and also with reference to the service of the witness summons to the witness Suresh.

3. The abovesaid petitions preferred by the petitioner has been resisted by the respondent contending that the special investigation team had returned the witness warrant stating that Suresh is not residing in the address mentioned by the petitioner and therefore, examination of the house owner and the postman is unnecessary and without providing the correct address of the said witness Suresh, the witnesses now sought to be recalled by the petitioner have no say in the matter and hence, the petitions preferred by the petitioner is totally unwarranted and liable to be dismissed.

4. On an appreciation of the materials available on record and the rival contentions put forth by the respective parties, the court below was pleased to dismiss the abovesaid petitions preferred by the petitioner. Impugning the same, the present Criminal Original Petition has been laid by the petitioner.

5. From the materials available on record and on hearing the rival contentions of the respective parties, it is noted that the CMP No.1094/2019 levied by the petitioner to examine the witness Suresh, financier, though was allowed by the court below on 12.03.2019, however, pursuant to the same, the witness summon sent to the abovesaid witness had been returned as "unclaimed" and thereafter, the witness warrant issued against the said witness had also been pending as the petitioner had not taken effective steps to execute the said warrant and as per the letter dated 16.09.2019 given by the Special Investigating Team Police, it was reported to the Court that the house owner of the said address, namely, Balasubramanian has informed that the said witness Suresh was not residing in the address mentioned by the petitioner and thereby the witness warrant had also been returned to the court. Following the same, the defence evidence was ordered to be closed and at the stage when the matter stood adjourned for defence arguments, the present petitions had come to be laid by the petitioner.

6. As rightly held by the court below, when the witness summons sent to Suresh and the witness warrant issued thereafter to secure the presence of the witness Suresh having been returned for the reason that he is not residing in the address mentioned by the petitioner and the petitioner has also not come forward with the correct address as to where the witness Suresh is residing, in such view of the matter, no purpose would be served by the examination of the house owner Balasubramanian and the postman when the witness warrant had been returned only for the reason that the house owner Balasubramanian had informed that the witness Suresh has not resided in his house at any point of time. In such view of the matter, the petitioner

should have endeavoured to furnish the correct address of the witness Suresh for enabling the court below to proceed further in the right direction. The petitioner having not taken any effective steps with reference to the same and his case that the said witness Suresh is residing only in the residence of Balasubramaniam having not been substantiated with plausible and reliable material, the abovesaid conduct of the petitioner would only go to expose that he intends to delay the proceedings endlessly without giving a quietus to the issues involved in the main case in STC No.515 of 2017. Resultantly, it has to be held that only for the justifiable reasons, the court below has dismissed the petitions preferred by the petitioner/accused. No interference is warranted to disturb the impugned order passed by the court below in the abovesaid petitions.

7. In the light of the abovesaid reasons I do not find any error or infirmity in the impugned order. Resultantly, the Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate
(Fast Track Court No. II),
Erode.

2.The Public Prosecutor,
High Court, Madras.

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