

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Crl.R.C.No.1439 of 2019
& Crl.M.P.No.18550 of 2019

V.Jaishankar .. Petitioner

Vs

R.Selvarayar .. Respondent

* * *

Prayer: Criminal Revision filed under Section 397 and 401 of the Code of Criminal Procedure, seeking to set aside the dismissal order in CMP No.7 of 2019 in CA No.38 of 2018 dated 09.09.2019 passed by the III Additional District and Sessions Judge, Vridhachalam.

* * *

For Petitioners : Mr.R.Sethuvarayar

For Respondent : Mr.A.V.Raja

ORDER

The petitioner has questioned the correctness or otherwise of the order dated 09.09.2019 passed by the learned III Additional District and Sessions Judge, Vridhachalam, in CMP No.7 of 2019 in CA No.38 of 2018, wherein and whereby, his prayer to examine additional witnesses was rejected.

2. The petitioner was convicted in the summary proceedings initiated for the offence under Section 138 of the Negotiable Instruments Act, 1881 by the respondent/complainant before the Judicial Magistrate No.I, Vridhachalam, in S.T.C.No.767 of 2012. Questioning the conviction, he filed Crl.A.No.38 of 2018, in which, he filed Crl.M.P.No.7 of 2019 seeking to examine the additional witness under Section 391(1) of Code of Criminal Procedure. The said petition was dismissed on 09.09.2019, which is questioned in this revision.

3. Learned counsel for the petitioner submitted that the witnesses now sought to be examined are necessary for deciding the defence taken by the petitioner/accused, as they were present when the disputed amount was repaid to the respondent/complainant. It is also contended that according to the statement of the respondent/complainant, the said amount was given by his daughter for executing the sale deed. It is submitted that there is no legally enforceable debt or liability on the part of the petitioner and hence, the first appellate court ought to have permitted the petitioner to examine those witnesses, but, without considering the grounds raised by the petitioner, it erred in dismissing the petition filed by the petitioner under Section 391 Cr.P.C.

4. Learned counsel for the respondent contended that the petitioner / accused, in spite of giving several opportunities by the Trial Court, failed to examine the witnesses at the time of trial and thus, he cannot seek examination of those witnesses before the appellate court. It is also contended that the appellate Court rightly dismissed the 391 Cr.P.C. petition and the petitioner has not made out any grounds to interfere with the said order.

5. Heard the learned counsel on either side and perused the materials available on record.

6. According to the learned counsel for the respondent, even before filing the petition under Section 391 Cr.P.C., the petitioner filed an application before the Trial Court seeking to re-open the case, which was dismissed. The petitioner / accused has not filed any petition to challenge the said order and hence, the present petition is not maintainable. This Court finds some force in the said submission.

7. It is to be noted that the Appellate Court considered the materials placed before it in proper perspective and rendered its findings on the defence of the accused. The Appellate Court also considered the fact that civil cases were pending between the petitioner and the wife of the proposed witness and the delay in filing the petition to examine the additional witnesses and rightly arrived at the conclusion that it is not desirable to examine those witness. Hence, there is no reason much less valid reason to interfere with the order passed by the Appellate Court.

8. Accordingly, this Criminal Revision stands dismissed as

devoid of merits. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-)

// True Copy//

Sub Assistant Registrar

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To

The III Additional District and Sessions Judge,
Vridhachalam.

+1cc to Mr.A.V.Raja, Advocate, sr 13909
+1cc to Mr.R.Sethuvarayar, Advocate, sr 14593

Cr1.R.C.No.1439 of 2019

SVI (CO)
GS (20/05/2020)