

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.10.2020

Coram

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Cr1.O.P.No.33795 of 2019

and

Cr1. MP No.18621 of 2019

Samsen Papli

...Petitioner

-vs-

J.Balasingh Samuel

...Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code to set aside the order of allowing the petition u/s 311 of CRPC by the learned Judge, III FTC, Saidapet, Chennai, dated 18.10.2019 in C.M.P. No.584 of 2019 in C.C.No.3086 of 2016.

For Petitioner : No appearance

For Respondent : No appearance

ORDER

(This case has been heard through video conference)

This Criminal Original Petition has been filed seeking the relief to set aside the order dated 18.10.2019 in C.M.P. No.584 of 2019 in C.C. No.3086 of 2016 passed by the learned Metropolitan Magistrate, Fast Track Court - III, Saidapet, Chennai.

2. Despite granting repeated adjournments, there is no representation for the petitioner as well for the respondent.

3. The petitioner herein is the accused and the respondent herein is the complainant.

4. On a perusal of the typed set of papers, it reveals that the respondent has filed a compliant under Section 200 CRPC for the offence under Section 138 of Negotiable Instruments Act before the learned II Metropolitan Magistrate, Fast Track Court, Saidapet, Chennai - 15.

5. At the time, when the same was posted for arguments before the Court below, the respondent/complainant has filed an application namely CMP No.584 of 2019 under Section 311 CRPC to

recall the PW1 for filing further exhibits. Accordingly, he prayed before the Court below to allow the said petition, after affording sufficient opportunity to the petitioner / accused.

6. The learned Metropolitan Magistrate, Fast Track, Saidapet, Chennai - 15 allowed the said petition in and thereby permitted PW1 to be recalled for further examination.

7. Challenging the same, the petitioner is before this Court with the present application.

8. On a perusal of the affidavit, it is found that the respondent filed the aforesaid petition under Section 311, CRPC and sufficient opportunity has been granted to the petitioner / accused to defend the said petition. The first and foremost contention raised by the petitioner is that on completion of PW1 evidence in the year 2013 though sufficient opportunity has been given to the respondent, he has filed the aforesaid petition in the year 2019 that too when the case was posted for judgment. Therefore, as per the grounds raised in this petition, the aforesaid 311 petition is nothing but to fill-up the lacuna and is not maintainable in law. Therefore, the petitioner prayed to set aside the order passed by the trial Court.

9. Per contra, it is the contention of the respondent / complainant that only at the time when the petition is filed, he found out a valid document to prove the genuineness of his case and therefore, without any alternative remedy, he filed the aforesaid petition to recall / reopen the case. In other words, it cannot be said that the aforesaid petition has been filed to fill up the lacuna.

10. Admittedly, it is not in dispute that prior to the filing of the petition mentioned 311 CRPC petition, the respondent herein on earlier occasions filed two 311 petitions and the same were dismissed.

11. On a perusal of the averments mentioned in the affidavit, it is clear that that the petitioner had a business transaction with the respondent / complainant. While presenting the cheques of Rs.3,35,50,000/- issued by the petitioner / accused, the bankers returned the same with an endorsement "insufficient funds". Therefore, prima facie, it is the duty of the respondent to prove the fact that the aforesaid cheques have been issued for the purpose of discharging the legally enforceable debt. Moreover, the documents referred by the petitioner is of the year 2006 and only subsequent to the said period, the alleged cheques have been issued by the petitioner. Therefore, it cannot be said those documents are

created for the purpose of filling the lacuna found in the respondent's case.

12. In such circumstances, this Court is of the considered view that the aforesaid 311 petition has been filed by the respondent just to fill up the lacuna, as stated by the petitioner is unjustifiable.

Section 311 of CRPC reads as follows :

311. Power to summon material witness, or examine person present. Any court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined and the court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

13. It is obligatory on the part of the Court to summon the witness, in case if evidence appears to be essential for the just decision and such power of the Court, is to be exercised to reach a just decision.

14. Hence, this Court is of the view that a decision can be exerciseable at any point of time. Further applying the principles laid down in the decision of the Hon'ble Supreme Court in the case of U.T. of Dadra & Nagar Haveli and another versus Fatensinh Mohansinh Chauhan reported in (2006) 7 SCC 529 to the instant case filing an application after completing 313 CRPC examination is not a fatal.

15. An overall consideration reveals that there is no warranting circumstances arises for interfering with the impugned order dated 18.10.2019 passed by the learned Metropolitan Magistrate, Fast Track Court - III, Saidapet, Chennai, in C.M.P. No.584 of 2019 in C.C.No.3086 of 2016.

16. In the result, the Criminal Original Petition stands dismissed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

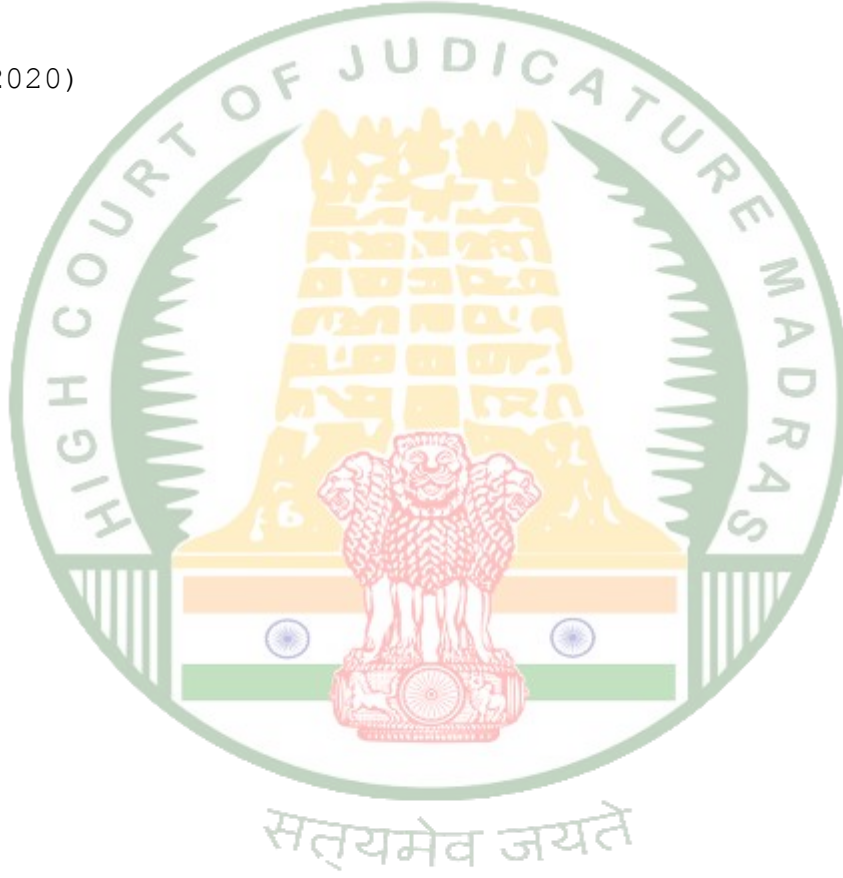
To

1. The III Judge,
Fast Track Court,
Saidapet,
Chennai.

2. The Public Prosecutor,
High Court, Chennai.

Crl.O.P.No.33795 of 2019

BR(CO)
RV(06/11/2020)



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