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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No. 8923 of 2021 and
Crl.M.P.No. 5806 of 2021

A.V.Raja

... Petitioner/Accused

Versus

M/s.Minerva Jewells
represented by its sole proprietor,
G.Suresh

... Respondent/Complainant

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the order dated 23.02.2021 made in C.M.P.No. 3750 of 2020 in S.T.C.No.346 of 2018 on the file of the learned Judicial Magistrate No I of Gobichettipalayam, Erode and set aside the same by allowing this Criminal Original Petition.

For Petitioner : Mr.J.Ranjithkumar

ORDER

This Criminal Original Petition has been filed to set aside the order dated 23.02.2021 made in C.M.P.No.3750 of 2020 in S.T.C.No. 346 of 2018 passed by the learned Judicial Magistrate No.I, Gobichettipalayam, Erode.

2. The petitioner is the accused and the respondent is the complainant in S.T.C.No. 346 of 2018. The petitioner has filed three criminal miscellaneous petitions before the trial Court as follows:-

- To mark documents, he has filed a petition under Section 254 Cr.P.C., in Crl.M.P.No.3748 of 2020 in S.T.C.No.346 of 2018.
- To recall the respondent for cross examination, he has filed a petition under Section 311 Cr.P.C., in Crl.M.P.No.3749 of 2020 in S.T.C.No.346 of 2018.



● To examine himself as defence witness, he has filed a petition under Section 315 Cr.P.C., in Crl.M.P.No.3750 of 2020 in S.T.C.No.346 of 2018.

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3. After scrutinizing the documents, hearing the petitioner, trial Court dismissed all the above three petitions by order dated 23.02.2021, against which the petitioner has filed the present Criminal Original Petition to set aside the order made in Crl.M.P.No.3750 of 2020, dated 23.02.2021.

4. On submissions and perusal of the order of the trial Court, it is seen that in this case, the respondent/complainant was examined in chief on 01.05.2019 and thereafter, his evidence was closed. On 16.05.2019, the petitioner was examined and questioned under Section 313 Cr.P.C. The petitioner was given time up to 13.06.2019 to file the list of defence side witnesses if any he proposes to examine. On 13.06.2019, the petitioner failed to appear before the trial Court and no representation on behalf of the petitioner side. On 08.07.2019, the petitioner had appeared. Since no petition under Section 254 of Cr.P.C., and failed to examine any defence witness, the defence side witness was closed. On 27.02.2019, the petitioner filed a petition under Section 311 Cr.P.C., to cross examine the PW1. On 19.08.2019, the petition under Section 311 Cr.P.C., was allowed. Thereafter, the petitioner failed to cross examine the respondent and the case was adjourned to 16.12.2019 and on that day also, no cross examination done, hence, the cross examination of the respondent closed. Later on 19.12.2019, again a petition under Section 311 Cr.P.C., was filed which was allowed on 24.08.2020. Thereafter, the case was adjourned for several hearings and the petitioner was present, but no cross examination was done, finally on 22.10.2020, the cross examination of the respondent was done in detail and closed. On 19.11.2020, the petitioner filed a petition to conduct the proceedings of this case along with two other cases filed by the respondent/complainant under Section 138 of the Negotiable Instruments Act, 1881 against other two accused. The trial Court dismissed the same on 08.12.2020. Thereafter, the respondent's side arguments heard and the case was posted on 14.12.2020 for defence side arguments. At this stage, the above said three petitions came to be filed. Finding that no proper reason given and the petitions are filed only to protract the proceedings for one reason or other, the trial Court dismissed the above three petitions. As against the dismissal of the three petitions, the petitioner has filed the above Criminal Original Petition to set aside the order made in Crl.M.P.No.3750 of 2020, dated 23.02.2021.



5. It is seen that the order of the trial Court is self explanatory, which clearly depicts the conduct of the petitioner in protracting the trial for one reason or other. The petitioner had sought to examine the witnesses namely A.A.Manikandan and A.M.Manikandan as defence witnesses to depose that they were partners with the petitioner and the respondent doing turmeric business and its income and expense. Further, during the cross examination of the respondent, it was put forth that the then Sub Inspector of Police, District Crime Branch, Erode conducted enquiry on the complaint of the petitioner on 16.11.2017 and the cheques were obtained. The petitioner had also sought to examine the Branch Manager, City Union Bank Limited, Gobichettipalayam, Erode, to produce the document on which day, the cheque book pertaining to the cheque No.000006 was issued; likewise the Branch Manager, Indusind Bank, Gobichettipalayam, Erode, to produce the statement of account from 01.05.2015 to 14.12.2020; A.A.Manikandan and one A.M.Manikandan.

6. On perusal of the materials, it is seen that the petitioner was given ample opportunity and the case is pending from the year 2018. The petitioner is protracting and delaying the cross examination. Finally on 22.10.2020, he had cross examined the respondent. The cross examination has been done in detail and the defence of the petitioner has been put-forth, which has been denied by the respondent. Further, the petitioner on his own conduct has lost his right of examining the defence witnesses.

7. In view of the above, this Court is not inclined to set aside the order dated 23.02.2021 made in CrI.M.P.No.3750 of 2020 in S.T.C.No. 346 of 2018 passed by the trial Court and the same is hereby confirmed. Accordingly, this Criminal Original Petition is disposed of. The petitioner wants to examine himself as witness under Section 315 Cr.P.C., this Court in the interest of justice invoking Section 482 of Cr.P.C., considered the same.

8. Considering the petitioner's submission that he is willing to examine himself as defence witness, this Court permits the petitioner to examine himself as witness under Section 315 Cr.P.C., and produce the documents available with him without seeking any further time. This opportunity is given taking into consideration the statutory presumption is against the petitioner and now, the petitioner intends to give explanation and produce documents.

9. It is made clear that the examination of the petitioner under Section 315 Cr.P.C., is to be done within a period of 15 days from the date of receipt of a copy of the order or after



commencement of the normal functioning of the Court below whichever is later. No further adjournment would be given by the trial Court for any reason. The petitioner to make final submissions, if he so desires.

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10. The trial Court is directed to conclude the proceedings and pass judgment within a period of two weeks after examination of the petitioner under Section 315 Cr.P.C. Consequently, the connected Criminal Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

msm

To

The Judicial Magistrate No.I,
Gobichettipalayam.

CRL.O.P.No.8923 of 2021

MG (CO)
RLP (29/07/2021)