



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2021

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. Nos.14423 & 14424 of 2017
and
Crl.M.P.No.9143 of 2017

1. M/s.Print India Paintings,
a firm rep by the Parter,
Thiru.N.M.Kader Mohamed Bilal,
Somu Gardens, Patel Street,
Surampatty Valasu, Erode-638 009.

2. Thiru.N.M.Kader Mohamed Bilal

...Petitioners in both Crl.O.Ps

Vs.

1.M/s.Yaley Chit Funds Private Limited,
by its Foreman,
Thiru.Premsharan Mathivanan,
Rep. by his
Power agent:
Thiru.K.Hari Krishnan
S/o.Karuppanna Mudaliar,
Karuppagoundampalayam(Post),
Erode Taluk(Erode Town P.S. Limit)

2.Thiru.N.Perumal

....Respondents in both Crl.O.Ps

COMMON PRAYER :Criminal Original Petitions filed under Section 482 of Criminal Procedure Code, to call for the records comprised in C.M.P.Nos.2865 and 2866 of 2017 in S.T.C.No.4 of 2017 dated 03.07.2017 on the file of the Judicial Magistrate Court No.I at Erode and set aside the same.

For Petitioner : Mr.V.Balamurugane

For Respondents : Mr.P.Mathivanan for R1

COMMON ORDER

These Criminal Original Petitions have been filed to call for the records comprised in C.M.P.Nos.2865 and 2866 of 2017 in S.T.C.No.4 of 2017 dated 03.07.2017 on the file of the Judicial



Magistrate Court No.I at Erode and set aside the same.

2. Aggrieved over the order of the Trial Court allowing the petitions filed under Section 311 of Cr.P.C. in C.M.P.Nos.844 and 845 of 2017 to recall the P.W.1, the present petitions are filed.

3. Heard the learned counsel for the petitioner and the learned counsel for the first respondent.

4. The main contention of the learned counsel for the petitioner that on an earlier occasion, the petition in C.M.P.Nos.844 and 845 of 2017 was filed and the same was allowed on 06.03.2017. Thereafter, the case was posted for complainant side evidence. Despite three opportunities were granted on 13.03.2017, 14.03.2017 and 22.03.2017, the respondent was not examined himself. Despite the above facts, the Trial Court has granted one more chance in Crl.M.P.Nos.2865 of 2017 & 2866 of 2017. Therefore, once the respondent has failed to avail the opportunity, granting one more opportunity for recalling and reopening the evidence so as to recall the principal complainant of the respondent firm, is not proper. As the evidence is crucial for the case, the petitioner stoutly opposed the petition stating that the delaying tactics of the respondent and further, the respondent had come with the present petition to fill up the lacuna in their case, which will seriously prejudice the right of the accused. However, final chance was granted to examine himself by payment of cost of Rs.1,000/- (Rupees One Thousand only). Hence, he submitted that the impugned order of Trial Court has to be set aside.

5. This Court has perused the entire materials available on record. Though the Trial Court has recorded a finding that PW1 has delayed the proceedings and in order to prove his case, one more chance is granted. What was in the mind of the Court is to grant opportunity to the parties. Therefore, this Court is of the view that the Trial Court granted an opportunity merely because on earlier occasion such opportunity was not availed, and the same cannot be construed to mean that such opportunity will enure to the benefit of PW1 or to defeat the rights of the respondent. The respondent is also given proper opportunity to examine the witnesses. In such view of the position, this Court is of the view that there is no infirmity found in the orders of the Trial Court. However, it is made clear that PW1 shall be examined on the same day fixed by the Trial Court if the PW1 does not examine himself on the date fixed by the Trial Court, he has to forfeit his right to examine himself. Cross Examination also to be done on the same day. The Trial Court is directed to complete the proceedings and dispose the main case within a period of six months from the



date of receipt of a copy of this order.

6. Accordingly, these Criminal Original Petitions are dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

msv

To

1. The Judicial Magistrate Court No.1
Erode

2. The Judicial Magistrate
Fast Track Court No.II
(Magistrate Level)
Erode.

3. The Chief Judicial Magistrate,
Erode.

+lcc to Mr.P.Mathivanan, Advocate, S.R.No.59185

Cr1. O.P. Nos.14423 & 14424 of 2017
and
Cr1.M.P.No.9143 of 2017

PL(CO)
RGA(03/12/2021) (27/12/2021)