IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CRL.O.P.NO.2583 OF 2017
AND
CRL.M.P.NO.1833 OF 2017

A.Salam Sulaiman ... Petitioner / Complainant

Vs.

1. Sri Ravi Travels (Chennai) Private Limited,
   Rep. by its Managing Director J.Ellaiyan

2. J.Ellaiyan
   Managing Director,
   Sri Ravi Travels (Chennai) Private Limited,
   No.27, Woods Road, B.R.Complex,
   Chennai - 600 002.

3. E.Gayathri
   Director,
   Sri Ravi Travels (Chennai) Pvt. Limited,
   No.27, Woods Road, B.R.Complex,
   Chennai - 600 002.

... Respondents / Accused

Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to set aside the order dated 09.11.2016 in Crl.M.P.No.3003 of 2016 in C.C.No.1740 of 2009 on the file of the FTC-II Metropolitan Magistrate Court, Egmore at Allikulam, Chennai - 600 003.

For Petitioner : Mr.I.Abdul Basith

For respondents : Mr.M.Baskaran

ORDER

This Criminal Original Petition has been filed against the order dated 09.11.2016 in Crl.M.P.No.3003 of 2016 in C.C.No.1740 of 2009 on the file of the FTC-II Metropolitan Magistrate Court, Egmore at Allikulam, Chennai - 600003.

2. A complaint was filed by the petitioner herein under Sections 138 and 142 of the Negotiable Instruments Act as amended by the Banking Public Financial Institutions and Negotiable Instruments (Amended) Act 1988 r/w Section 200 Cr.P.C.

3. The case of the petitioner is that the petitioner is a businessman who has legal transactions with many Foreign Companies. The 1st Accused J.Ellaiyan, Managing Director of Sri Ravi Travels (Chennai) Pvt. Ltd., being the full-fledged money changer, exchanger and foreign currency converter having a valid license of Reserve Bank of India. The 1st Accused had been transacting the exchange of foreign currency on many occasions, and hence, out of the imposed confidence on the 1st Accused, the petitioner on 29.09.2008 had sold the foreign currency of Ten thousand US Dollars at the rate of Rs.49/- which was purchased by the 1st Accused for the exchange rate of Rs.49/- on par with the Indian currency exchange value. In pursuance of the purchase of the foreign currency on par with the Indian currency, the 2nd Accused for and on behalf of the 1st Accused in lieu to discharge the liability had duly signed and issued a cheque on the said date i.e. 29.09.2008 bearing No.227875 for a sum of Rs.4,90,000/- drawn on Indian Overseas Bank, College Road Branch, Chennai - 600 006, in favour of the petitioner. The 3rd Accused being one of the directors of the company is equally liable for the act of the 1st Accused Company and the said transaction was also sanctioned by the 2nd and 3rd Accused. As per the instructions of the 2nd Accused, the said cheque was presented on 20.12.2008 in the petitioner's collecting Bank, viz., Indian Overseas Bank, Tower Branch, Anna Nagar, Chennai - 600 040. But the same was returned on 22.12.2008 with an endorsement “payment stopped by drawer”.

4. It is the further case of the petitioner that on 07.01.2009, the petitioner had sent a legal notice in writing thereby calling upon all the three Accused to repay the cheque amount within a period of 15 days from the date of receipt of the notice. The said legal notice was duly acknowledged by all the accused on 22.01.2019. In spite of receiving the said notice, all the Accused have failed to repay the cheque amount and not even sent any reply to the notice. Hence the petitioner has given a private complaint invoking Section 138 of Negotiable Instruments Act r/w Section 200 of Cr.P.C before the FTC-II Metropolitan Magistrate Court, Egmore, against the respondents / accused. The said complaint was taken on file in C.C.No.1740 of 2009. Since the respondents have dragged the case before the Trial Court in the name of settling the issues out of Court, the petitioner has filed Crl.O.P.No.26382 of 2013 before this Court to expedite the trial and dispose of the case in C.C.No.1740 of

2009. This Court on 11.10.2013 allowed the said petition, directing the Trial Court to dispose of the case in C.C.No.1740 of 2009 expeditiously.

5. It is also the case of the petitioner that the order in Crl.O.P.No.26382 of 2013 was passed in the year 2013 and the chief examination of PW1 was taken place in 2016 i.e. on 30.09.2016. Thereafter, the matter was posted for further chief examination of PW1 on 13.10.2016. On 13.10.2016, the respondents' counsel was absent, PW1 was further examined in chief, Exs.P7 to P12 were marked and the matter was posted for arguments on 02.11.2016. On 02.11.2016, petitioner side arguments were heard and the matter was posted for respondents side arguments on 09.11.2016. On 09.11.2016, the respondents herein have filed a petition in Crl.M.P.No.3003 of 2016 under Section 311 Cr.P.C., to recall the witness for cross examination. The Trial Court has allowed the said petition stating that the PW1 was further examined in chief on 13.10.2016 for which the respondents / accused have not cross examined and the right of accused cannot be denied at any court. When the petitioner himself prolonged the case by giving additional evidence, he cannot say that the respondents delaying the case and there would not be prejudice to the petitioner if the petition is allowed. In fact, the real fact would come into light only if the PW1 is cross examined by the respondents. Aggrieved by the said order, the petitioner has filed this Criminal Original Petition before this Court stating that the order of the Court below is illegal and contrary to law.

6. The learned counsel for the petitioner would submit that the proceedings in C.C.No.1740 of 2009 is pending from the year 2009. The petitioner / complainant is a Senior Citizen aged about 70 years and he has been prosecuting the case for the past 8 years to get back his hard earned money from the respondents / accused. Further, the learned counsel for the petitioner would submit that this Court on 11.10.2013 has directed the Court below to dispose of the case in C.C.No.1740 of 2009. In spite of the said direction, the above case has not been disposed of by the Court below even after four long years. The matter was posted for chief examination of the petitioner on 30.09.2016. After completion of the chief examination, the matter was posted for arguments on 02.11.2016. The petitioner side arguments were heard on 02.11.2016. When the matter was posted for respondents side arguments, the respondents / accused have filed a petition under Section 311 Cr.P.C., for recalling the witness. The Trial Court without application of mind and without giving sufficient opportunity to the petitioner to file his counter has allowed the said petition on the day itself, and the same needs interference of this Court.

7. Heard the learned counsel for the petitioner and the learned counsel for the respondents, and perused the materials available on record.

8. On perusal of the records, it is seen that the 1st respondent herein is a Private Limited Company who is also an Authorized Money Exchanger and Foreign Currency Converter having valid license of Reserve Bank of India. The petitioner herein has sold foreign currency of Ten Thousand US Dollars at the rate of Rs.49/- to the 1st respondent on par with Indian Currency Exchange Value, for which, the 2nd and 3rd respondents who are the directors and authorized signatories of the 1st respondent have issued a cheque dated 29.09.2008 bearing No.227875 for a sum of Rs.4,90,000/- drawn on Indian Overseas Bank, College Road Branch, Chennai - 600006, to the petitioner. When the petitioner has presented the cheque, it got dishonoured. Hence the petitioner has sent a demand notice on 07.01.2009 to the respondents. In spite of the demand notice, the respondents have not come forward to pay the cheque amount. Hence the petitioner with no other options filed a private complaint before the FTC-II Metropolitan Magistrate Court, Egmore at Allikulam, Chennai - 600 003 and the same is still pending without being adjudicated.

9. It is seen from the order of the Court below that initially when the petitioner was examined in chief on 30.09.2016, the respondents / accused were absent. On 13.10.2016, when the petitioner was further examined in chief, again the respondents / accused were absent. On 02.11.2016, when the matter was taken up for arguments on both sides, again the respondents / accused were absent. Thereafter, when the matter was taken up for respondents side arguments on 09.11.2016, the respondents have filed a petition under Section 311 Cr.P.C for recalling the witness PW1.

10. It is observed from the order of the Court below that nearly on four occasions, the respondents / accused have absented themselves by filing 317 Cr.P.C petition before the Court below. Even when the petitioner was examined in chief, neither the respondents nor their counsel have cross examined the petitioner, and only at the time of arguments, the respondents have filed a petition for recalling the witness PW1 and the same was also allowed by the Court below without giving an opportunity to the petitioner to put forth his defence.

11. The learned counsel for the petitioner submits that when there is no proper reason given by the respondents / accused for absenting themselves throughout the trial, they cannot be permitted for recalling the witness for cross examination. Whereas, the learned counsel for the respondents submits that

even though he has not given any reply to the notice sent by the petitioner, he is able to produce material evidence if he is permitted to cross examine the petitioner.

12. Taking into consideration the facts and circumstances of the case, this Court is inclined to give an opportunity to the respondents / accused to cross examine the petitioner on condition that the respondents shall deposit a sum of Rs.1,00,000/- to the petitioner's counsel by way of demand draft on or before 20.07.2021.

13. Accordingly, the respondents are directed to deposit Rs.1,00,000/- to the petitioner's counsel by way of demand draft on or before 20.07.2021. On receipt of such payment, the FTC-II, Metropolitan Magistrate, Egmore at Allikulam, Chennai, is directed to give an opportunity of hearing to the respondents and dispose of the case in C.C.No.1740 of 2009 within a period of three months from the date of receipt of a copy of this order.

14. With the above direction, this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

// True Copy//

Sub Assistant Registrar

raja

To

1. The FTC-II Metropolitan Magistrate,
   Egmore at Allikulam, Chennai - 3.
2. The Metropolitan Magistrate, Egmore, Chennai.

+1cc to Mr.I.Abdul Basith , Advocate, SR.No.31466

CRL.O.P.No.2583 of 2017
and
CRL.M.P.No.1833 of 2017

NR(CO)
RLP(02/08/2021)