

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.03.2021

C O R A M

The Hon'ble Mr. Justice N.ANAND VENKATESH

CrI.O.P.No.23207 of 2018

1. M/s.Thirupathi Brothers,
No.16, Lamesh Street, Janaki Nagar,
Valasaravakkam, Chennai-600 087.
2. Mr.N.Subash Chandrabose, S/o.Nammalawar
Partner, M/s.Thirupathi Brothers,
No.16, Lamesh Street, Janaki Nagar,
Valasaravakkam, Chennai-600 087.
3. Mr.N.Lingusamy, S/o.Nammalawar
Partner, M/s.Thirupathi Brothers,
No.16, Lamesh Street, Janaki Nagar,
Valasaravakkam, Chennai-600 087. ... Petitioners

vs.

Mr.A.M.Manoji
Proprietor, M/s.Venkatesa Agency,
No.508/165, 2nd Floor,
2-A, T.T.K.Road, Alwarpet,
Chennai-600 018. ... Respondents

PRAYER: Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed by the learned Metropolitan Magistrate, Fast Track Court-IV, George Town at Chennai, Order dated 23.08.2018 in CrI.M.P.No.6421 of 2018 in C.C.No.2079 of 2017 permitting the Respondent/Complainant to produce further evidence after completion of trial.

For Petitioners : M/s.V.Ramamurthy
For Respondent : Mr.A.Damodaran

O R D E R

This petition has been filed challenging the order passed by the court below allowing the application filed by the respondent under Section 311 of Cr.P.C. to recall PW1 for the purpose of marking additional documents.

2. The respondent has filed a complaint against the petitioners for an offence under Section 138 of Negotiable Instruments Act. The case was at the stage of final arguments.

At that stage, the respondent filed an application under Section 311 of Cr.P.C. to recall PW1 for the purpose of marking two additional documents, namely, pro-note which is said to have been executed by the accused persons and a letter that was given by them. The court below allowed this application by order dated 23.05.2018. Aggrieved by the same, the present petition has been filed before this Court.

3. Heard Mr.V.Ramamurthy, learned counsel for the petitioner and Mr.A.Damodaran, learned counsel for the respondent.

4. The main grievance that was expressed by the learned counsel for the petitioners is that the respondent, in the course of trial, had specifically stated that there are no other documents except the cheque that was issued in favour of the respondent by the petitioners. Having taken such a stand, the respondent should not be allowed to introduce new documents. The learned counsel further submitted that if at all such documents were available, the respondent should have brought in those documents at the relevant point of time and he cannot be allowed to file an application after completion of questioning under Section 313 of Cr.P.C. and when the case was at the stage of final hearing. The learned counsel submitted that the court below ought not to have allowed the application and the order of the court below requires interference .

5. Per contra, the learned counsel appearing on behalf of the respondent submitted that the respondent wanted to discharge his burden of proof that there was a legally enforceable debt/liability and therefore, sufficient opportunity must be given to the respondent. The learned counsel further submitted that the petitioners will have sufficient opportunity to cross-examine the respondent and therefore, no prejudice will be caused if PW1 is recalled for the purpose of marking the additional documents.

6. This Court has carefully considered the submissions made on either side and the materials available on record.

7. The offence under Section 138 of the Negotiable Instruments Act adopts a peculiar procedure of reverse burden. By virtue of Section 139 of the Negotiable Instruments Act, the presumption is in favour of the complainant that there was an enforceable debt or liability and this burden must be discharged by the accused in the course of trial. Once the accused had discharged the burden, thereafter it shifts to the complainant to prove that there is an enforceable debt or liability.

8. In the present case, the only material document that was marked in the course of trial was the cheque. The petitioners

have sufficiently cross-examined the respondent with regard to the said document. The complainant has come to the conclusion that the accused persons have discharged the burden and therefore, the burden had shifted on the complainant to once again prove the existence of a legally enforceable debt or liability. Therefore, the complainant wants to mark certain additional documents namely pro-note, said to have been executed by the petitioners and the letter which is said to have been given by the petitioners to the respondent. The court below has rightly held that, an opportunity must be given to the complainant to discharge this burden. No prejudice will be caused to the petitioners since they will have the opportunity to cross-examine PW1 on the documents that are sought to be marked as additional documents. Once PW1 is recalled and further cross-examination is conducted, obviously the court below will have to again question the accused persons under Section 313 of Cr.P.C.

9. In view of the above discussion, this Court does not find any ground to interfere with the order passed by the court below and the court below is directed to complete the proceedings in C.C.No.2029 of 2019 within a period of three months from the date of receipt of a copy of this order.

10. This Criminal Original Petition is disposed of accordingly.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The Metropolitan Magistrate,
Fast Track Court-IV,
George Town at Chennai.

+1cc to Mr.V.Ramamurthy, Advocate, S.R.No.14049.
+1cc to Mr.A.Damodaran, Advocate, S.R.No.13248.

Cr1.O.P.No.23207 of 2018

PMK(CO)
CSR 19.04.2021