IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.2141 of 2022

N.Sathish ... Petitioner

Vs.

R.Devendiran ... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 28.12.2021 passed in Crl.M.P.No.986 of 2021 in S.T.C.No.25 of 2019 by the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Vellore and to allow the said Crl.M.P. filed by the petitioner.

For Petitioner : Mr.Arun Anbumani

O R D E R

This Criminal Original Petition has been filed to set aside the order dated 28.12.2021 passed in Crl.M.P.No.986 of 2021 in S.T.C.No.25 of 2019 by the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Vellore and to allow the said Crl.M.P. filed by the petitioner.

2.The petitioner has filed a complaint under Section 138 of Negotiable Instruments Act against the respondent in S.T.C.No.25 of 2019, which is pending before the Judicial Magistrate, Fast Track Court at Magisterial Level, Vellore. The petitioner filed a 311 Cr.P.C. petition in Crl.M.P.No.986 of 2021 to examine the Commercial Tax Officer, Vellore in this case to prove the fact that the petitioner is running a business of jaggery and also registered with Commercial Tax Department and GSTIN.No.33CEFPS1899GIZ4 and the same was dismissed for the reason that it only cause further delay and hence by order dated 28.12.2021, the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Vellore had dismissed the same.

3.The contention of the petitioner is that the petitioner was examined in chief on 23.09.2019 and he had marked Ex.P1 to Ex.P6. The accused failed to cross examine on the same day. Later a 311 Cr.P.C. petition was filed. The petitioner was recalled and he was cross examined twice on 16.12.2020 and 11.01.2021. During cross examination two pertinent questions asked with regard to the petitioner's financial credibility capacity and about his business further suggestion was put to the petitioner for not providing the GST and TIN particulars. Thereafter, it was suggested that the petitioner has no status and means, to extend such a huge amount as loan to the accused and for that reason no documents have been produced during the trial was raised. Accused also disputed the execution of promissory note, which necessitated the petitioner to file a 311 Cr.P.C. petition, to examine the attesting witness as PW.2. The examination was done on 02.09.2021. On the same day, the petitioner filed 311 Cr.P.C. petition in Crl.M.P.No.986 of 2021 to examine the Commercial Tax officer of Vellore as witness with direction to produce the business particulars of the petitioner, available with the Commercial Tax Department in GSTIN No.33CEFPS1899GIZ4. The copy was served to the learned counsel for the accused on the same day and thereafter counter was filed on 16.10.2021. The trial Court by order dated 18.12.2021 dismissed the same.

4.According to the petitioner once the accused disputes and questioned the status of the petitioner, with regard to the financial credibility and for not producing certain documents, thereafter it is for the petitioner/complainant to disprove the same by summoning tenable materials available with Commercial Tax Officer and further to examine him to prove the doubt. In view of the same, the petitioner filed a petition to examine the Commercial Tax Officer. Though the Court allowed the petition to examine PW.2, attestor to promissory note, summoning and examining the Commercial Tax Officer denied for the reason that it would cause delay which is not proper. Once financial capacity of petitioner disputed it is imperative to have the benefit of presumption under Section 139 of Negotiable Instruments Act to examine the petitioner under Section 311 Cr.P.C. petition, to examine the Commercial Tax Officer, Vellore to clear the doubt. Further, on the side of the accused Bank Manager was examined as DW.1, which was on a latter date.

5.Considering the submissions and on perusal of the materials, this Court finds that the petitioner already examined and marked Ex.P1 to Ex.P6, later when he was cross examined on two occasions, execution of promissory note disputed, which necessitated the examination of PW.2, the attesting witness to the document. In this case, it is to be seen that the accused despite on receipt of statutory notice failed to reply. In view of the same, the petitioner will not be aware till his cross examination, the defence of the accused or any dispute with regard to the execution of the cheques financial capabilities and other facts. Only during cross examination the petitioner's financial credibility questioned and disputed.

6.In view of the same, it is necessary to examine Commercial Tax officer, Vellore, to prove petitioners business credentiality and to clear the doubt raised by the accused during cross examination. PW2 was examined and cross examined on 02.09.2021, immediately petition under Section 311 filed, the trial Court dismissed the same, after keeping the miscellaneous petition for four months is also a delay. In the interest of justice delay cannot be a reason. Further examining Commercial Tax Officer, Vellore, who is not a interested witness for the complaint, he is a public servant. He is neither a witness to be ascribed for the prosecution nor for the accused, he is a public servant, who has to depose with regard to the public document, which is available with the Commercial Tax Department. The petitioner to give details of doubts to be produced by the Commercial Tax Officer, Vellore. The rule is that best possible available witness to be examined in the interest of Justice.

7.Further by examining Commercial Tax Officer, an independent witness will cause no prejudice to the accused. The accused will have opportunity to cross examine the witness. By examining the Commercial Tax Officer, Vellore, trial Court will be benefited to arrive at a just decision. Hence, trial Court is directed to summon and examine the Commercial Tax Inspector, Vellore as witness, within a period of two weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

The Judicial Magistrate, Fast Track Court
at Magisterial Level,
Vellore.

Crl.O.P.No.2141 of 2022

GMR(CO)
CT 11/02/2022