



CrI.O.P.No.20348 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2022

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.O.P.No.20348 of 2019

and

CrI.M.P.No.10464 of 2019

Uma Maheshwari

... Petitioner

Vs.

N.V. Krishnan

... Respondent

Prayer: Criminal Original Petition is filed under section 482 of CR.P.C., to call for the records relating to the CMP.SR.No.2217 of 2019 in C.C.66 of 2010 on the file of the Judicial Magistrate No.II, Walajapet and set aside the same as far as the petitioners are concerned.

For Petitioner : Mr. Labrar MD Abdullah

For Respondent : Mr. S. Sairaman



Crl.O.P.No.20348 of 2019

ORDER

WEB COPY

This petition is filed to call for the records relating to the CMP.SR.No.2217 of 2019 in C.C.66 of 2010 on the file of the Judicial Magistrate No.II, Walajapet and set aside the same.

2. Heard, the learned counsel for the petitioner and respondent.

3. The case under Section 138 of Negotiable Instruments Act initiated in the year 2010, the accused-Uma Maheshwari has taken out an application under Section 243 of Cr.P.C., to summon 14 witnesses to be examined on her side. 14 witnesses whom the accused wants to examine are as follows:

List of Witnesses:

1. The Manager SME Branch, State Bank of India, Walajapet, Vellore District.
2. The Manager, Indian Bank, Thimiri Branch, Vellore.
3. The Manager, ICICI Bank Limited, Main Branch, Mill Road, Coimbatore.



4. The Manager, The State Bank of India, RASMECC & SARC No.97, 7th East Main Road, Gandhi Nagar, Vellore.
5. The Manager, The State Bank of Trivancore, Coimbatore.
6. The Manager, Indian Bank, Ram Nagar Branch, Coimbatore.
7. The Manager SME Branch, State Bank of India, Walajapet, Vellore District.
8. Mr.Manikandan S/o. K.S.Mariappan, 165 A1, S.S.Mill Road, Coimbatore-641024.
9. Mr.Nemarasu S/o.P.A.Parasuram, No.2, P.R.Rukku Thimiri, Vellore District.
10. The Head Clerk/Serasdhar, The V Additional District Sessions Judge, Coimbatore-641018.
11. The Sub Registrar, Madukkarai Registrar Office, Coimbatore.
12. The Commercial Tax Officer, Sundarapuram Circle, Coimbatore.
- 13.V.Ganesh Kumar, S/o. Velusamy, C/o Varshini Equipments, 13/1C, Eachanari to Madukkarai Road, Coimbatore.
14. Mr.Anandha Kumar, The Manager, Varshini Equipments, 13/13/1C, Eachanari to Madukkarai Road, Coimbatore.



WEB COPY

4. The trial Court had dismissed the petition on two grounds. First, the provision of law cited is related to warrant case and since the private complaint has been taken as summons case. The petition filed under wrong provision of law is not maintainable. The second reason for dismissal of this petition is that while listing out names of 14 witnesses to be examined on the side of defence witness but there is no particulars for what purpose they are to be summoned. Being aggrieved, the present Crl.O.P., is filed to call for the records and set aside the same.

5. In the grounds it is stated that the Judge has failed to consider the list of witnesses are more essential to support the petitioner's case and the Court has also failed to take note of the fact that under Section 243 of Cr.P.C., the accused is entitled to enter upon his defence and produce evidence. Thus, the trial Court without ensuring fair trial by giving opportunity to the accused who is burden with a presumption against her under Negotiable Instruments Act, ought to have numbered the petition, allowed and summoned the defence witness listed.



WEB COPY

6. Learned counsel for the respondent/complainant would state that the complaint is of the year 2010 in connection with dishonour of two cheques, one for Rs.5 lakhs and another for Rs.60,000/- both drawn at M/s.ICICI Limited, Coimbatore by the petitioner herein in favour of the respondent. After dragging the matter for 9 years and answering the incriminating questions put to her under Section 313(b) Cr.P.C., the present petition is filed to drag and same was not filed under correct provision of law and also no reason stated why 14 witnesses have to be examine and what is the role in the case to speak about.

7. This Court on considering the rival submission, find that the petitioner being an accused has been offered an opportunity to cross examine the petitioner witnesses and the Manager of State Bank of India Walajapet and Assistant Manager of State Bank of Arcot were extensively cross examined. However, as an accused, the petitioner is entitle to lead witness in support of her case. For that purpose, the Miscellaneous Petition has been filed but under wrong provision of law and without assigning the



reason for which these witnesses are sought to be summoned.

WEB COPY

8. This Court finds that without indicating for the purpose for which these witnesses have to be summoned, the above application has been filed and this Court unable to understand how the Bank officials of other Bank or branches unconnected with the Bank of the drawer or the Bank of the drawee are relevant witnesses. Similarly, certain individuals like Head Clerk of Additional Sessions Court, Coimbatore, Sub Registrar, Madukkarai Registered Office, Commercial Tax Officer, Sundarapuram Circle, Coimbatore are also included in the list of witnesses to whom summons from the Court is sought for without assigning reason for what he is to be summoned. A petition of this nature without any detail, seeking summon to Government officials and bank officials cannot be entertained.

9. Therefore, this Court finds no error in the trial Court returning the petition. However, if the accused/petitioner is really interested to marshal evidence in her defence, it is always open to her to file appropriate petition naming the witnesses and the purpose for which they



should be examined. While doing so, since the ulterior design of the petitioner is clear and palpable, this Court having the advantage of reading the deposition of P.W.1 and P.W.3, this Court is of the view that the petitioners/accused herein has to deposit 20% of the cheque amount, as interim compensation under Section 143(A) of Negotiable Instruments Act before exercising her right to summon witnesses. This amount shall be kept in deposit in the account of C.C.No.66 of 2010 on the file of Judicial Magistrate-II, Walajapet, till the disposal of the case.

10. Further, if the petitioner wants to examine any defence witness, should deposit Rs.20,000/- for each of the witness for their expense and if such deposit is made and proper reasons assigned in the petition for summoning the defence witness, the same shall be ordered by the trial Court subject to satisfaction of the reasons.

11. With this, criminal original petition is disposed of. Consequently, connected miscellaneous petition is closed. The trial Court is directed to proceed with the trial and complete the trial, preferably within



Crl.O.P.No.20348 of 2019

four months from the date of receipt of copy of this order. The deposit of interim compensation shall be made within three weeks from the date of receipt of the order.

23.06.2022

AT

Internet : Yes

Index : Yes/No

Speaking / Non-speaking

To

1.The Judicial Magistrate No.II, Walajapet.



WEB COPY



Crl.O.P.No.20348 of 2019

Dr.G.JAYACHANDRAN,J.

AT

Crl.O.P.No.20348 of 2019 and
Crl.M.P.No.10464 of 2019

23.06.2022