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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2022

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.23447 of 2021
and Crl.M.P.No.12861 of 2021

K.Zakir Hussain

... Petitioner/Accused 2

Vs.

M/s.Dharani Enterprises,
Represented by its Proprietor,
K.Gopikrishnan,
Son of K.J.Ranganathan,
New Town, Vaniyambadi,
Thirupattur District.

... Respondent/Complainant

PRAYER: The Criminal Original Petition filed under Section 482 of Code of Criminal Procedure pleased to set aside the order passed in Crl.M.P.No.5635 of 2021 dated 01.11.2021 in S.T.C.No.66 of 2016 on the file of the learned Judicial Magistrate, Vaniyambadi, Vellore District.

For Petitioner : Mr.V.Krishnamoorthy

ORDER

The petition has been filed seeking to set aside the order passed in Crl.M.P.No.5635 of 2021 dated 01.11.2021 in S.T.C.No.66 of 2016 on the file of the learned Judicial Magistrate, Vaniyambadi, Vellore District, dismissing the petition under Section 311 of Cr.P.C.

2. Brief facts of the case are as under:-

a) The petitioner is arrayed as A2 in S.T.C.No.66 of 2016, filed by the respondent/complainant for the offence under Section 138 of Negotiable Instruments Act.

b) It is the case of the petitioner that the respondent/complainant filed the criminal complaint fully knowing that the petitioner is not a partner and has not signed



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the cheque and that he had got clinching evidence to substantiate his stand and that some of the documents have to be collaborated with PW1 and thereby, the petition had been filed to recall PW1 for establishing that the petitioner is not the partner.

c) The respondent had filed detailed counter in which he has stated that on an earlier occasion, the petitioner/A2 filed an application under Section 45 of the Indian Evidence Act to examine the expert and that the petition was dismissed on 07.02.2020 and that the petitioner/A2 has not taken any further steps on the petition and that the petition has been filed only to prolong the proceedings.

d) It is the further case of the respondent/complainant that on 14.03.2018 itself, the evidence of the complainant was taken and that nine documents were marked and evidence of the complainant was completed as early as on 28.03.2018 and thereafter, the petitioner/A2 had filed an application under Section 91 of Cr.P.C., in CrI.M.P.No.2093 of 2018 and that the petition was enquired in detail and it was also dismissed on 12.02.2019. Thereafter, the petitioner/A2 had been repeatedly taking adjournments and the present petition had been filed much belatedly in order to delay the proceedings.

e) The Trial Court finding that the case was pending from the year 2016 and that the respondent/complainant was examined fully on 03.08.2018 and that the petition was filed without proper reasons with the only motive to delay the proceedings, had dismissed the application. Against which the present original petition has been filed.

3. Learned counsel appearing for the petitioner would submit that the petitioner is not a partner in the first accused's firm and he has not signed the cheque. Only at later point of time, the petitioner got hold of some documents and thereby, he had filed petition to reopen and recall P.W.1 to cross examine him with that aspect. However, the trial Court without taking into consideration, that a burden is cast on the petitioner/A2 to disprove the case of the complainant, had dismissed the application. He would pray that if one opportunity is given, the petitioner will cross examine PW1.

4. Heard the learned counsel and perused the materials available on record.



5. It is the case of the year 2016, the respondent/complainant was examined in chief on 14.03.2018 and nine documents were marked on his side and the evidence of the respondent/complainant has been closed on 14.03.2018. Thereafter, the petitioner/A2 had been taking time from 28.03.2018 for cross examination and he had filed an application under Section 91 of Cr.P.C., and that petition has been dismissed and against which, no application had been filed. Further, the petitioner had filed an application to recall PW1. Perusal of the records shows that the petitioner had earlier recalled PW1 and has cross examined in detail and completed on 03.08.2018. The Trial Court had rightly finding that no proper reason has been stated by the petitioner, had dismissed the application.

6. However, when this Court enquired the petitioner, it is stated that the case has been posted at the arguments stage. This Court finds no infirmity in the orders passed by the Trial Court. Hence, this Criminal Original Petition stands dismissed. Consequently, the connected miscellaneous petition is also closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

rgi/ham

To

The Judicial Magistrate,
Vaniyampadi.

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and Crl.M.P.No.12861 of 2021

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