



Crl.R.C.(MD).No.175 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.03.2023

Pronounced on : 17.03.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.175 of 2023

and

Crl.M.P.(MD)No.2482 of 2023

P.M.Sivasubramanian

... Petitioner/Petitioner/Accused

Vs.

R.Malarvizhi

... Respondent/Respondent/Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records relating to the order passed in Crl.M.P.No.8352 of 2022 dated 23.11.2022 in S.T.C.No.15 of 2019 by the learned Judicial Magistrate, Bodinaickanur and set aside the same.

For Petitioner : Mr.C.Ezhilrasu

For Respondent : Mr.C.Ganesh Kumar

ORDER

This Criminal Revision is directed against the order passed in Crl.M.P.No.



Crl.R.C.(MD).No.175 of 2023

8352 of 2022 in S.T.C.No.15 of 2019 dated 23.11.2022 on the file of the Court
of Judicial Magistrate, Bodinaickanur.

2. The respondent/complainant has filed a private complaint under Section 200 Cr.P.C. against the petitioner/accused for the alleged offences under Sections 138 r/w 142 of Negotiable Instruments Act. After completion of the complainant side evidence, when the case stood posted for arguments, the petitioner has filed an application to reopen the case. The respondent has filed a counter statement raising serious objections. The learned Judicial Magistrate, after enquiry, has passed the impugned order dated 23.11.2022 dismissing the said petition. Aggrieved by the said dismissal order, the petitioner has come forward with the present revision.

3. It is not in dispute that when the case was pending for defence evidence, the petitioner has filed a petition seeking permission to examine the Bank Manager of Union Bank of India, Madurai, that the said petition was ordered to be allowed by the Court and summons was ordered to be issued, that the Bank Manager, after receipt of the summons, has not chosen to appear before the concerned Court, that thereafter, witness warrant was ordered to be issued and



Crl.R.C.(MD).No.175 of 2023

that the learned Judicial Magistrate has sent a letter to the jurisdictional police for executing the witness warrant.

4. The learned counsel appearing for the petitioner would submit that when the witness warrant was pending against the said Bank Manager, the learned Magistrate on 11.10.2022, after recording that report has not been received from the Inspector of Police, South Police Station, Madurai, suo moto closed the defence side evidence and posted the case for further arguments.

5. The learned counsel appearing for the petitioner would contend that the petitioner had already given a complaint with regard to the loss of his cheque leaves and the same was to proved only through the Bank Manager and that the learned Magistrate, without taking steps for the execution of the witness warrant, has suo moto closed the defence side evidence.

6. It is pertinent to note that only on the application filed by the petitioner, summons was ordered to be issued to the Bank Manager of Union Bank of India, Madurai.



Crl.R.C.(MD).No.175 of 2023

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7. It is not the case of the respondent or the Magistrate Court that even after ordering witness warrant against the Bank Manager, batta and process fee were not paid by the petitioner.

8. As rightly contended by the learned counsel appearing for the petitioner, the concerned Court alone has to take steps for executing the witness warrant and it is not in the hands of the petitioner.

9. The learned Magistrate ought to have addressed letters to the Police higher officials informing about the non-execution of witness warrant or to the Banking higher officials informing the conduct of the Bank Manager in not attending the Court, despite the receipt of the Court summons.

10. It is pertinent to note that the petitioner cannot take any steps either to execute the witness warrant or to get the report from the concerned police.

11. The learned Judicial Magistrate is having powers to take action under Section 174 IPC or under Section 350 Cr.P.C. for non-attendance before the criminal Court. Section 174 IPC deals with non-attendance in obedience to a summon, notice, order or proceeding from any public servant, legally competent



Crl.R.C.(MD).No.175 of 2023

as such to issue the same, covers all the cases where summons, notices etc, have been issued and relates to all the proceedings. But Section 350 Cr.P.C. deals only with the witnesses which were summoned to appear before a criminal Court and neglect or refuse to accept them. It is pertinent to note that Section 350 Cr.P.C. is a special provision made with an object to empower the criminal Courts to try witnesses summarily for disobedience of its own summons.

12. As rightly contended by the learned counsel appearing for the petitioner, since the petitioner is no way responsible for non-execution of the witness warrant and for non-sending of any report by the jurisdictional police, the suo moto closure of the defence side evidence is not proper and is not good in law, as the same would affect the petitioner greatly. Hence, this Court concludes that the impugned order is liable to be set aside.

13. In the result, this Criminal Revision Petition is allowed and the impugned order in Crl.M.P.No.8352 of 2022 in S.T.C.No.15 of 2019 dated 23.11.2022 closing the defence side evidence is set aside. The learned Judicial Magistrate, Bodinaickanur is directed to take necessary steps for the execution of the witness warrant through the jurisdictional police by addressing the higher officials or by invoking the provisions of the Code of Criminal Procedure.



Crl.R.C.(MD).No.175 of 2023

Further, the learned Judicial Magistrate, Bodinaickanur is directed to complete the trial and dispose of the case in S.T.C.No.15 of 2019 within a period of two months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

17.03.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To

1.The Judicial Magistrate,
Bodinaickanur.



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Crl.R.C.(MD).No.175 of 2023



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Crl.R.C.(MD).No.175 of 2023

K.MURALI SHANKAR, J.

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Pre-Delivery order made in
Crl.R.C.(MD)No.175 of 2023
and
Crl.M.P.(MD)No.2482 of 2023

Dated : 17.03.2023