



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.04.2023

Delivered on : **28.04.2023**

CORAM:

THE HONOURABLE MRS.JUSTICE **R.THARANI**

CrI.O.P.(MD) No.15636 of 2021
and
CrI.M.P.(MD)No.8403 of 2021

Veeramani

... Petitioner / Petitioner/ Accused

Vs.

Shanthini

... respondent / respondent/ Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records made in Cr.M.P.No.5565 of 2019, in S.T.C.No.755 of 2012, on the file of the Judicial Magistrate No.II, Trichirappalli, dated 27.08.2021 and to set aside the same and to allow the impugned application filed under Section 243 of Cr.P.C for taking defence evidence.

For Petitioner : Mr.M.Viji for Mr.S.Deenadhayalan

For Respondent : Mr.B.Jameel Arasu



ORDER

WEB COPY

This petition is filed to set aside the order in Cr.M.P.No. 5565 of 2019, in S.T.C.No.755 of 2012, on the file of the Judicial Magistrate No.II, Trichirappalli, dated 27.08.2021

2. The allegation against the petitioner is that the petitioner borrowed a sum of Rs.7,05,000/- from the complainant and promised to repay the amount together with 24% interest. He paid interest only for 23 months. When the respondent demanded the principal amount, the petitioner issued a cheque for a sum of Rs.9,48,290/-, dated 19.07.2012 drawn on Indian Overseas Bank, Aayakaranpulam Branch and requested the complainant to present the cheque, after a lapse of one month. The complainant presented the cheque for collection on 14.08.2012, through his Bankers Oanyan Grama Bank, Cantonment Branch, Trichy and the cheque was returned with an endorsement as "insufficient funds". A legal notice was issued the accused on 27.08.2012 and later a case in STC.No.755 of 2012 was registered against the petitioner. Against the case, the petitioner filed a petition in Cr.M.P.No.5565 of 2019, to permit the petitioner to give evidence.



3. A Brief substance of the counter filed by the respondent

before the trial Court in Cr.M.P.No.5565 of 2019 is as follows:-

WEB COPY

Proof affidavit was filed by the complainant in the year 2012, he was cross examined on 29.01.2013. The case was referred to Lok Adhalat, but, the petitioner never appeared before the Lok Adhalat. The petitioner filed a petition to send the pro-note for expert opinion. But, he failed to take further steps in the petition. List of defence witness was filed on 31.08.2017. The petitioner did not take proper steps to examine the witnesses. The petitioner filed somany petitions in various stages and then left the petitions incomplete, the only motive for filing those petitions is only to drag on the case.

4. After hearing both sides, the trial Court dismissed that petition. Against the dismissal order, the petitioner has approached this Court on the following grounds:

The Trial Court failed to appreciate the fact that the case is posted for defence side witness and the accused had already produced the witnesses list. Only due to the absence of the counsel on 26.04.2019, the said witnesses could not be examined. Hence, a sum of Rs.1,500/- was paid as costs, to the witnesses. Unless the defence witnesses are



examined, the petitioner will be prejudiced. Due to the pandemic situation, the petitioner was not in a position to file a petition immediately and prayed the petition to be allowed.

5. A perusal of the records reveals that the petitioner is in the habit of filing various petitions. On 26.04.2019, 9 witnesses were present and the accused was not ready to examine the witnesses and the trial Court has ordered the petitioner to pay a sum of Rs.1,500/- as costs to the witnesses. Again, the petitioner failed to take steps to produce the said witnesses before the Court. This petition was filed without even mentioning the name of the witnesses to be examined.

6. A perusal of the records reveals that though the case was filed in the year 2012, the petitioner is dragging on the matter. But, an opportunity for the petitioner is to be given in the interest of justice. Hence, this petition is allowed on condition of payment of cost of Rs.10,000/- (Rupees Ten Thousand only) to the respondent on or before 01.06.2023 and on further condition that the petitioner has to examine the defence side witnesses within a period of two months from the date of receipt of copy of this order. Failing which, the permission for



WEB COPY

Crl.O.P.(MD)No.15636 of 2021



examination of witnesses granted under Section 243 of Cr.P.C shall stand cancelled. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
Ls

28.04.2023

To

1.The Judicial Magistrate No.II,
Trichirappalli.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.O.P.(MD)No.15636 of 2021

R.THARANI. J.

Ls

Pre-delivery order made in
Crl.O.P.(MD)No.15636 of 2021

28.04.2023