



Crl.O.P.No.14745 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2024

CORAM

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.O.P.No.14745 of 2024
and Crl.M.P.No.9002 of 2024

1. K. Senthil Kumar

2. Daily MAX Solutions,
Represented by its Proprietor,
Senthil Kumar

.... Petitioners

Versus

Padmavathy
Represented by her Power Agent
S.Chandrasekaran

.... Respondent

Prayer: The Criminal Original Petition is filed under Section 482 of Cr.P.C. to modify the order passed by the Judicial Magistrate, Fast Track Court No.1 @ ML, Coimbatore, in Cr.M.P.No.1509 of 2024 in C.C.No.488 of 2020 dated 16.04.2024 and subsequently examine one Lalitha and Ranganathan as a defence side evidence within a stipulated time that may be fixed by this Court.



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For Petitioners : Mr.C.Adhikesavan

ORDER

The petitioner herein is an accused in a complaint registered under Section 138 of Negotiable Instruments Act. After completion of recording the complainant side evidence, incriminating material evidence put to the petitioner herein by way of questioning under Section 313 of Cr.P.C. Finally, when he was asked whether he has any defence witness, he has answered 'yes' and mentioned the name of one Lalitha, who is none other than his wife and one Ranganathan, Periyaputhur, Vadavalli, Coimbatore. Thereafter, he has taken out an application under Section 315 Cr.P.C. to examine himself (accused) as well as two witnesses, whose names he has named in 313 questioning.

2. The trial Court, after perusing this application under Section 315 Cr.P.C. pointing out that the proposed defence witnesses names and identity not mentioned in the petition, partly dismissed the application and allowed the accused to examine himself as witness on his side.



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3. The learned counsel for the petitioner submits that omission to mention the witnesses' names specifically in the petition is due to inadvertence. However, the intention of the accused to examine the two witnesses was made clear when he was questioned under Section 313 Cr.P.C. Therefore, seeks indulgence of this Court to set aside the order passed by the trial Court and provide him an opportunity to marshal his witnesses to discharge the burden of presumption against him.

4. A perusal of the impugned order indicates that the trial Court has dismissed the application insofar as summoning the witnesses on two grounds, (1) names of the witnesses not specifically mentioned in the petition and (2) the purpose for which the witnesses to be examined not mentioned. Certain questions put to the complainant during the cross-examination will not be sufficient for the Court to summon those witnesses.



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5. This Court, on considering the records, finds that the petitioner has not mentioned the names of the witnesses to be examined on his side in the petition filed under Section 315 of Cr.P.C. The reasoning given by the trial Court for not entertaining the request of the petitioner to summon the two witnesses, whose name he has mentioned in the answer under Section 313 of Cr.P.C. is that in the petition filed under Section 315 of Cr.P.C., their names are not mentioned. Since the petitioner has disclosed at the earliest instance his intention to examine two defence witnesses, his petition under Section 315 Cr.P.C. though not well drafted and he could have filed another petition under Section 311 of Cr.P.C. for examining these two witnesses on his side, his failure to file such a petition has to be condoned since he has expressed his intention in writing when he was asked whether he has any defence witness on his side.



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6. Therefore, the trial Court is directed to summon Lalitha W/o. Senthil Kumar, No.1031, Periyaputhur, Vadavalli, Coimbatore, and Ranganathan, Periyaputhur, Vadavalli, Coimbatore, and afford opportunity to the petitioner herein to examine them as defence witnesses. The petitioner is directed to file a petition with necessary batta for summoning these two witnesses within a period of 15 days from today (29.07.2024), failing which, he will lose the opportunity of examining the two witnesses.

With the above observations and directions, this Criminal Original Petition is disposed of. Consequently, the connected Miscellaneous Petition is closed.

29.07.2024

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DR.G. JAYACHANDRAN, J.

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To

The Judicial Magistrate, Fast Track Court No.1,
Coimbatore,

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and Crl.M.P.No.9002 of 2024

29.07.2024