



Crl.R.C.(MD).No.1431 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 30.04.2024

CORAM

THE HONOURABLE MR. JUSTICE K.K.RAMAKRISHNAN

Crl.R.C.(MD).No.1431 of 2023

and

Crl.M.P(MD).No.18176 of 2023

Chandramohan

.. Petitioner

Vs.

Arumugasamy

... Respondent

PRAYER: This Criminal Revision Case is filed under Sections 397 r/w 401 of the Criminal Procedure Code, to call for the records and to set aside the order passed by the learned Judicial Magistrate No.II, Virudhunagar in Cr.M.P.No.14397 of 2023 in C.C.No.83 of 2018 dated 27.10.2023.

For Petitioner : Mr.R.Rajamohan
For Respondent : Mr.Muneeswaran

ORDER

This petition has been filed to call for the records and to set aside the order passed by the learned Judicial Magistrate No.II, Virudhunagar in Cr.M.P.No.14397 of 2023 in C.C.No.83 of 2018 dated 27.10.2023.



Crl.R.C.(MD).No.1431 of 2023

2. The petitioner is the accused in C.C.No.83 of 2018 on the file of the learned Judicial Magistrate No.II, Virudhunagar.

3. The complainant and the petitioner have been running the business for several years. The complainant is running the business as per law and he is also regularly paying the GST to the TIN number. The complainant have been supplying the Neem seeds to the petitioner on credit basis. According to the complainant, the petitioner failed to repay the amount of Rs.12.5 lakhs.

4. The case of the petitioner is that there was no such liability to prove the supply of the said Neem seeds to the petitioner. It is necessary to examine the Commercial Department Officers to ascertain the supply of the goods. Therefore, he filed the petition to examine the said officer from the Commercial Tax Office. Hence, the petitioner has filed a petition under Section 315 of Cr.P.C in Cr.M.P.No.14397 of 2023 for reopen the defence side evidence to examine the defence side witnesses. Without considering the facts of the case and without any valid ground, the learned trial Judge dismissed the petition on 27.10.2023. Challenging the same, the present revision has been filed.



Crl.R.C.(MD).No.1431 of 2023

5. The learned counsel for the respondent/complainant would submit that the accused not only filed the application without any reason to examine the above witnesses and also with intention to prolong the case. The case in C.C.No.83 of 2018 is pending before the concerned Court, since 2018 and he is prolonging the hearing of the case. Hence, he seeks dismissal of the revision.

6. Heard both sides and perused the materials available on record.

7. According to the petitioner, there was no liability to prove the supply of Neem seeds. Therefore, he requested to examine the said witnesses.

8. Apart from that, this Court accepts the argument of the learned counsel for the petitioner, in the interest of justice, the petitioner has got a right to adduce the evidence to prove the supply of Neem Seeds from the respondent by examining the Commercial Department Officers.

9. To substantiate the above finding, this Court is duty bound to consider the relevant provision and its object: under Section 254 of Cr.P.C.,



the following terms cast a duty upon the learned Judicial Magistrate to exercise his discretionary power to allow the defence witness:

254. Procedure when not convicted.—

(1) If the Magistrate does not convict the accused under section 252 or section 253, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence.

(2) The Magistrate may, if he thinks fit, on the application of the prosecution or the accused, issue a summons to any witness directing him to attend or to produce any document or other thing.

(3) The Magistrate may, before summoning any witness on such application, require that the reasonable expenses of the witness incurred in attending for the purposes of the trial be deposited in Court.

10. It is the right of the accused to adduce the defence witness not only to prove his defence and also to rebut any statutory presumption. In the said circumstances, discretionary power should not be exercised arbitrarily and, it should be exercised in judicial manner and not to shut down the accused's right of producing evidence. Therefore, the learned counsel for the petitioner rightly relied the ratio laid down by the following judgments:



10.1.The Hon'ble Supreme Court, in the case of Ronald Vs. State of

West Bengal reported in ***AIR 1954 SC 455***, has held as follows:

“Although the evidence on record may tend to establish a strong case against the Accused, he is entitled to rebut and if certain documents would furnish good material for rebutting that case, the Court, by declining to issue process for the examination of the Witnesses connected with those documents, would deprive the Accused of an opportunity of rebutting it. The Accused cannot be convicted without an opportunity being given to him to present his evidence and if it is denied to him, there is no fair trial and conviction cannot stand. It is essential that rules of procedure designed to ensure justice should be scrupulously followed, and Courts should be jealous in seeing that there is no breach of them”.

10.2.This Court in the case of ***N.Hentry Vs. P.Natarajan***, reported in ***2014 (2) MWN (Crl) DCC 61***, has held as follows:

13. The right of the Accused to have his Witnesses examined or to have documents produced on his side cannot be denied. The general rule is that an opportunity should be



conferred to the Accused to adduce his evidence. But he cannot have unfettered principle to prolong the proceedings by adopting delaying tactics. It is always open to the Magistrate to put a stop to it. But in a case where the burden is on the Accused, as in this case, the attempt of the Accused to establish his defence by Defence Witnesses cannot be thwarted. Even in a case where the evidence is strong in the prosecution the Accused is entitled to rebut it by examining his own Witnesses or producing documents which would furnish good material for rebutting the Prosecution case. In such a situation that could be preferred by the Accused only if he is allowed to adduce defence evidence.

10.3. This Court in the case of ***M.Saravanan Vs. S.Murugesan in Crl.R.C.No.970 of 2017***, has held as follows:

21. As has been rightly pointed out by the learned Judge, the power of the Magistrate under Section 254(2) of the Code is of wider amplitude than that of the Sessions Judge, and while exercising the said power either accepting or rejecting the petition for summoning any witnesses, the Magistrate concerned must give reasons as to why, he accepts the petition or



rejects the same, as the case may be. If these parameters are applied in the impugned order, it can be easily stated that the learned Magistrate has not given any reasons for rejecting the said plea of the petitioner. Even the one line reason given in the short order is not a correct reason. The finding given by the learned Judge at the time of the rejection of petition is that, there is no change in circumstance, and therefore the said reason given in the present impugned order is not acceptable. Therefore, this Court is of the view that the impugned order is unsustainable. Hence it is liable to be set aside and accordingly it is set aside.

11. By applying the principle this Court has no hesitation to set aside the impugned order by holding that the same is against the true intent and spirit of Section 254 (2) of Cr.P.C., as laid down by the Hon'ble Supreme Court and this Court.

12. At the same time, this Court is duty bound to consider the grievance of the respondent/complainant that the case was pending from the year 2018. It is the duty of this Court to consider the paramount interest of



Crl.R.C.(MD).No.1431 of 2023

both parties. Therefore, this Court is inclined to allow this revision case with direction to the trial Court to complete the trial.

13. Accordingly, this Criminal Revision Case stands allowed in the following terms:

(i) the impugned order, dated 27.10.2023, in Cr.M.P.No.14397 of 2023 in C.C.No.83 of 2018 passed by the learned Judicial Magistrate No.II, Virudhunagar, is hereby set aside.

(ii). The petitioner is directed to file a process memo along with the fees to examine the witnesses on 22.07.2024 and on receipt of the same, the learned Judicial Magistrate No.II, Virudhunagar to issue summon to the witnesses on 12.08.2024.

(iii). The petitioner is directed to examine the witnesses on the same day (i.e) on 12.08.2024 itself and if there is any inconvenience, the learned trial Judge shall complete the same on the subsequent hearing date.

(vi) the petitioner and the respondent are hereby directed to co-operate with the above completion of the examination of witnesses. It is



Crl.R.C.(MD).No.1431 of 2023

further, directed that the respondent has to cross examine the above witnesses on the same day.

(vii) if the petitioner fails to produce the evidence on that day, the learned trial judge is at liberty to proceed with the case further in accordance with law from the stage of the case as stood on the date of passing the impugned order ie., 27.10.2023 and complete the trial within further period of two months thereafter from 31.08.2024.

Consequently, the connected miscellaneous petition is closed.

30.04.2024

Index : Yes / No
Internet : Yes / No
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To,

1. The learned Judicial Magistrate No.II, Virudhunagar
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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Crl.R.C.(MD).No.1431 of 2023

K.K.RAMAKRISHNAN, J

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Crl.R.C.(MD).No.1431 of 2023

30.04.2024