
(2009) 03 MAD CK 0030

In the Madras High Court

Case No : Criminal R.C. No's. 1479 and 1480 of 2007 and M.P. No's. 1 and 1 of 2007

Jose Ukkuru

APPELLANT

Vs

Southern Iron and Steel Company

RESPONDENT

Date of Decision : 31-03-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311, 397, 401
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2009) 03 MAD CK 0030

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Advocate : S. Lakshmanasamy, for the Appellant; S.K. Nachimuthu, for the Respondent

Final Decision : Dismissed

Judgement

S. Tamilvanan, J.—Heard both sides.

2. The petitioner/accused has filed the criminal revision petitions, u/s 397 r/w 401 Cr.P.C, seeking an order to call for the records and set aside the

order, dated 05.09.2007 passed in CrI. M.P. No. 2365 of 2007 in C.C. No. 119 of 2006 and CrI.M.P. No. 2364 of 2007 in C.C. No. 103 of

2006 on the file of the Judicial Magistrate No. I, Mettur, Salem District.

3. It is seen from the records that the respondent herein has filed CrI.M.P. Nos. 2364 and 2365 of 2007 u/s 311 of the Code of Criminal

Procedure to recall P.W.1, in order to mark a document, a subsequent letter sent by the petitioner herein to the respondent.

4. The learned Counsel appearing for the petitioner submits that the trial court has allowed the petitions filed by the respondent, though it would

affect the right of the petitioner herein. According to the learned Counsel appearing for the petitioner, the petitions u/s 311 Cr.P.C were filed only to fill up the lacuna.

5. Per contra, Mr. S.K. Nachimuthu, learned Counsel appearing for the respondent contended that a case was registered on the complaint given

by the respondent u/s 138 of Negotiable Instruments Act, since five cheques issued by the petitioner on various dates, each for the value of Rs. 10

lakhs were dishonoured by the bank. The said cheques were dishonoured by the bank, due to insufficient funds, hence the respondent herein

lodged two separate complaints, u/s 138 of Negotiable Instruments Act, after issuing legal notice, as contemplated under the Act.

6. It is seen that in the petition filed u/s 311 Cr.P.C before the Court below, the respondent has specifically averred that during the pendency of the

cases before the learned Judicial Magistrate No. V, Coimbatore and learned Judicial Magistrate No. II, Mettur, the petitioner/accused

approached the respondent/complainant and expressed his desire to settle the claim of the complaint and handed over two Demand Drafts, each

for Rs. 5 lakhs and requested the respondent/complainant to adjust the same towards the old dues. The respondent herein filed the aforesaid

petitions, u/s 311 Cr.P.C, only for the purpose of marking the covering letter of the petitioner herein. According to the learned Counsel for the

respondent, recalling P.W.1 for marking the covering letter sent by the petitioner would not cause any prejudice to the petitioner. It is seen that the

court below in the impugned order has discussed the aforesaid facts in detail.

7. Section 311 of the Code of Criminal Procedure reads as follows :

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in

attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine

or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

8. In the instant case, the respondent herein has specifically stated the reason that subsequent to the examination of P.W.1, the covering letter along

with two Demand Drafts for the value of Rs. 5,00,000/- each was sent by the petitioner/accused. Hence, the letter has to be marked as document,

by recalling P.W.1, only for the purpose of marking the document. In such circumstances, the revision petitioner/accused will also have right of

cross-examining the witness, who is being recalled. The petitioner/accused has not disputed the fact that the alleged covering letter and the two

Demand Drafts were sent by him to the respondent.

sent the covering letter along with two demand drafts for the value of Rs. 5,00,000/- each and hence, the covering letter has to be marked as

document by recalling P.W.1 for the purpose of marking the document. In such circumstances, the revision petitioner/accused is also having right

of cross-examining the witness.

9. Considering the aforesaid facts and circumstances, I am of the view that the Court below has properly passed orders, u/s 311 of the Code of

Criminal Procedure and as such, I could find no error or infirmity in the impugned order, so as to warrant any interference by this Court and

further, the petitioner is having right to cross-examine the witness, P.W.1, who is to be recalled for marking the document and therefore, the

petitioner would not be prejudiced by the impugned order passed by the court below. Hence, I am of the view that the criminal revision is not

legally sustainable and the same is liable to be dismissed.

10. In the result, the criminal revision petitions are dismissed. Consequently, connected miscellaneous petitions are also dismissed. The learned

Counsel appearing for the respondent submits that the case relates to the year 2006 and in the earlier revision preferred by the petitioner, this

Court was pleased to direct the court below to dispose the cases within the time frame and further, requested this Court to direct the Court below

to dispose the cases within the time limit fixed by this Court. Since the matter is of the year 2006, I find it just and reasonable to direct the Court

below to dispose the cases, according to law, within a period of six months from the date of receipt of a copy of this order, without any further

extension of time.