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Sarkhel Developer Vs. Madras Cements Ltd.

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SooperKanoon Citation : sooperkanoon.com/1169507

Court : Chennai

Decided On : Jul-01-2014

Judge : T.S.Sivagnanam

Appellant : Sarkhel Developer

Respondent : Madras Cements Ltd.

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED : 1-7-2014 CORAM THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM CRIMINAL REVISION CASE No.693 of 2010 and M.P.No.1 of 2010 1.M/s.Sarkhel Developer & Builders (P) Ltd., Rep.

By its Managing Director Ziaulla Building, Buxi Bazar Cuttack 753 001 2.Arindam Sarkhel 3.Swapna Sarkhel 4.Monideepa Sarkhel .Petitioners vs Madras Cements Ltd., IV Floor, 98-A, Radhakrishnan Salai Mylapore, Chennai 600 004.Respondent Criminal revision case preferred under Section 397 read with 401 of Code of Criminal Procedure against the order dated 12.4.2010, made in M.P.No.2792/2009 in C.C.No.6252/2002, on the file of the VII Metropolitan Magistrate, George Town, Chennai.

For Petitioners : Mr.Manoj Sreevalsan For Respondent : Mr.V.Venkadasalam

ORDER

This revision case is directed against the order passed by the Court of VII Metropolitan Magistrate, George Town, Chennai, in M.P.No.2792/2009 in C.C.No.6252/2002.

2.Heard Mr.Manoj Sreevalsan, learned Counsel for the petitioners/accused, and Mr.V.Venkadasalam, learned Counsel for the respondent/complainant.

3.The respondent filed the said complaint under Section 138 of the Negotiable Instruments Act and the petitioners herein have been arrayed as accused.

According to the respondent/complainant, the accused are liable to pay the cheque amount for the goods sold to them viz.

cement bags.

The Junior Manager (Legal) filed the proof affidavit on behalf of the complainant company and elaborate cross-examination has also been done.

At that relevant time, the petitioners/accused filed a petition under Section 254(2) of Cr.P.C., praying the Court to summon one Mr.Alok Kumar Guha, who was the Sales Representative of the complainant firm, as a defence witness.

The said petition was resisted by the complainant by contending that the said person has left the management of the complainant company and therefore, he cannot be summoned.

The Court below dismissed the petition by the impugned order stating that the burden is on the accused to prove that there is no legally enforceable debt or liability during the couRs.of trial and the Court cannot compel the complainant to produce the said person as a defence witness.

Furthermore, the Court below noted that the said person is no longer in the services of the complainant firm and if at all there is no legally enforceable debt or liability accrued and there is no supply of a specific order of cement from the complainant, it can be proved effectively by other ways also.

Further the Court below recorded the submission of the complainant that the whereabouts of the said representative are not known, since the matter is long pending from the year 2002.

Challenging the same, the present revision case has been filed.

4.The learned Counsel on either side made elaborate submissions on the scope of power under Section 254 of Cr.P.C.The learned Counsel for the petitioners placed reliance on the decision of the Hon'ble Supreme Court in the case of T.NAGAPPA V.

Y.R.MURALIDHAR reported in (2008) 5 SCC633 with regard to summoning of witnesses.

5.On the other hand, the learned Counsel for the respondent/complainant placed reliance on the decision of the Hon'ble Supreme Court in the case of CENTRAL BUREAU OF INVESTIGATION V.

TUNCAY ALANKUS reported in (2013) 9 SCC611 and submitted that if summons are sought to be obtained to examine any witness, ordinarily, the defence is required to satisfy the Court as to how the examination of the said witness would be in aid of its defence and the witness need not be summoned only because the defence wishes the Court to do so.

6.After hearing the learned Counsel for the parties and perusing the materials placed on record, it is to be noted that at the fiRs.instance, while issuing the reply notice, the accused took a specific stand that when the cheque was issued to the said Mr.Alok Kumar Guha, it was with an express condition that the complainant will deposit the cheque after delivery of the cement, and unfortunately, the cement was not delivered.

This according to the complainant, is a false statement, since the accused are due and liable to pay several lakhs of rupees and in this regard, a civil suit in O.S.No.2224/2005 is pending on the file of the VII Additional City Civil Court, Chennai.

On a perusal of the proof affidavit filed by the complainant, it is seen that Exs.P3 to P17 have already been filed in the said civil suit and therefore, certified copies alone were marked before the trial Magistrate.

In the said documents, the statement of accounts is found marked as Ex.P3.

P.W.1 has been elaborately cross-examined.

The reason for summoning the said witness, according to the petitioners/accused, is that the presence of the said person is required to prove the fact that there was no delivery of goods effected.

In such circumstances, it cannot be stated that the request made by the petitioners/accused, is irrelevant.

If during the couRs.of cross-examination, the petitioners/accused seek to elicit certain information, which was taken by them as a defence at the earliest point of time while issuing the reply notice, the Court below could well exercise its discretion in the matter and summon the witness to be examined as a defence witness.

However, the complainant cannot be compelled to find the whereabouts of the said witness and it is for the petitioners/accused to ascertain his whereabouts and produce proper address so that the trial Court can issue summons to the said person.

7.In the result, this criminal revision case is allowed and the impugned order is set aside and the Court below is directed to summon Mr.Alok Kumar Guha subject to the condition that the petitioners/accused furnish his correct address, and thereafter, proceed with the matter in accordance with law.

It is made clear that the Court below shall proceed with the matter uninfluenced by any of the observations made in this order for the purpose of summoning the said witness.

Consequently, connected MP is closed.

8.Taking note of the fact that the case is of the year 2002 and the miscellaneous petition was filed before the trail Court in 2009 and this revision case is pending before this Court from 2010 onwards, the trial Court shall grant one month time to the petitioners/accused to produce the correct address of the said witness.

If the petitioners/accused are unable to produce the same within the said period, then the benefit of this order shall not enure to the petitioners and the trial Court is at liberty to proceed with the case further in accordance with law.

1-7-2014 Index: yes/no nsv To: The VII Metropolitan Magistrate George Town, Chennai T.S.SIVAGNANAM, J.

nsv CRL.R.C.No.693 of 2010 Dt: 1-7-2014

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