

Shanthi and Others Vs. Karbaga Lakshmi Fabric, Proprietor, K. Rajendran

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Court : Chennai Madurai

Decided On : Jun-07-2016

Judge : The Honourable Dr. Justice P. Devadass

Appeal No. : CrI.R.C.(MD)No. 222 of 2016 & CrI.M.P.(MD).No. 2937 of 2016

Appellant : Shanthi and Others

Respondent : Karbaga Lakshmi Fabric, Proprietor, K. Rajendran

Judgement :

(Prayer: This Criminal Revision Petitions is filed under Section 397 r/w. 401 Cr.P.C., praying to call for the records pertaining to the impugned order dated 11.03.2016, made in Cr.M.P.Nos.823 of 2016 in C.C.No.286 of 2015 by the learned Judicial Magistrate, Rajapalayam, Virudhunagar District and to set aside the same by allowing this criminal revision petition.)

1. A3 to A5 in C.C.No.286 of 2015, challenges dismissal of the Cr.M.P.No.823 of 2016 by the learned Judicial Magistrate, Rajapalayam, Virudhunagar District.
2. A1 to A5 are being prosecuted before the said Magistrate in the said calendar case for an offence under Section 138 of Negotiable Instruments Act. A1 is company, A2 to A5 are natural persons. Among them A2 is a head of the family, A3 to A5 are his wife, son and daughter respectively.

3. A3 to A5 have filed Crl.M.P.No.823 of 2016 under Section 205 Cr.P.C. seeking dispense with their personal appearance before the Court.
4. The learned Magistrate dismissed their petition on the ground that there was no material to support their claim that they are not well. Aggrieved, this revision has been filed by them.
5. It is seen that at the time of admission of this Criminal Revision, this Court directed the revision petitioner to deposit Rs.1,00,000/-. It has been deposited.
6. In this revision petition notice has been served on the respondents and their names have also been printed in the cause list. But they have not chosen to appear before this Court in person or by their advocate. In the circumstances, we shall dispose of this revision based on the arguments of the learned counsel for the revision petitioners and perusal of the records on merits.
7. Section 205 Cr.P.C., is in two parts. Section 205(i)Cr.P.C. empowers the Court to dispense with the appearance of the accused, when they are being represented through a pleader. Still under Section 205(i) Cr.P.C the Court can direct their appearance, if really their appearance is required.
8. In the criminal courts more particularly in the Magistrate Courts, there is large number cheque bouncing cases and other type of criminal cases. Resultantly, there is huge gathering of crowds. It is quite a sickening sight. Actually they spoil the work of the Court. If really the presence of the accused is necessary or the identity of the accused is involved or if their plea has to be recorded or they have to be examined under Section 313 Cr.P.C. or the judgment is to be pronounced, their presence in the Court can be insisted upon. These are all the effective hearings. Other than this, the normal hearing dates are considered as ordinary/formal hearing dates. For the ordinary hearing dates also, if the accused were directed to be present in the Court, a criminal Court will be a crowd puller. It will cause headache to one and all. First of all it is a nuisance to the criminal Court. Secondly, the accused's presence is not really required in the particular day, he may have some work in the house, sometimes they have to go to work for their livelihood. But when the case is posted for normal hearing and the accused was

asked to appear in the court and it is wasting their time and also wasting the Court's time and is also wasting of human energy. To avoid this, Section 205(i) Cr.P.C. can be invoked. Thus, petitions filed under Section 205 Cr.P.C., can be liberally considered. But in this case, the learned Magistrate considered it with tinged glasses. The Magistrates conducted the enquiry in the petition under Section 205 like a main case. He expected proof and documents. It is not necessary. It is all wasting court's time. In the facts and circumstances, the Magistrate liberally could have considered the petition. If really the persons are needed for any effective hearing, he can ask them to present under Section 205(ii) Cr.P.C.

9. In the circumstances, the impugned order of the learned Judicial Magistrate passed in CrI.M.P.No.823 of 2016 in C.C.No.286 of 2015, dated 11.03.2016 is set aside. The personal appearance of the revision petitioners, namely, A3 to A5 in C.C.No.286 of 2015 are dispensed with. However, their pleader should represent them, as and when their presence is required for any effective hearing, when ordered so, they shall present in the Court. The learned Judicial Magistrate shall deposit Rs.1,00,000/- in a Nationalised Bank in Rajapalayam, Virudhunagar District. Entitlement to the said Rs.1,00,000/- together with the accrued interest shall be decided at the time of disposal of the main Calendar Case. Accordingly this Criminal Revision is disposed of. Consequently connected miscellaneous petition is closed.

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