

Shivakumar Vs. Palanisamy

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Court : Chennai

Decided On : Jul-03-2007

Reported in : I(2008)BC242

Judge : K.N. Basha, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 311; Negotiable Instruments Act, 1988 - Sections 138 and 139

Appeal No. : CrI. O.P. No. 25173 of 2006 and M.P. No. 1 of 2006

Appellant : Shivakumar

Respondent : Palanisamy

Advocate for Def. : N. Doraisamy, Legal Aid Counsel

Advocate for Pet/Ap. : N. Manokaran, Adv.

Judgement :

ORDER

K.N. Basha, J.

1. The learned Counsel for the petitioner submits that the petitioner has come forward with this petition to set aside the order passed by the learned Judicial Magistrate No. 1, Gobichettipalayam in CrI. M.P. No. 1124 of 2006 in C.C. No. 222

of 2007 dated 10.3.2006 dismissing the petition filed under Section 311, Cr.P.C. to recall PW1 for the purpose of cross-examination.

2. Learned Counsel for the petitioner submits that the petitioner is facing trial for the alleged offence under Section 138 of Negotiable Instruments Act. It is contended by the learned Counsel for the petitioner that since the petitioner's Counsel was not well, the petitioner was not able to cross-examine PW1. As a result, the learned Magistrate closed the petition on the ground that there was no representation. Learned Counsel for the petitioner submits that the cross-examination of PW1 is just and essential in rebutting the presumption contemplated under Section 139, Negotiable of Instruments Act.

3. Mr. N. Doraisamy, learned Counsel appearing for the respondent as legal aid Counsel, contended that there is no illegality or infirmity in the impugned order passed by the learned Magistrate. It is contended by the learned Counsel for the respondent that even on earlier occasion the petitioner filed the same application under Section 311 of Cr.P.C. for recalling PW1 for cross-examination and in spite of the presence of PW1, the petitioner has not chosen to cross-examine PW1.

3.1 I have carefully, considered the submissions made by the learned Counsel either on side and also perused the impugned order passed by the learned Magistrate. It is seen that the learned Magistrate proceed to dismiss the petition filed by the petitioner under Section 311 of Cr.P.C. mainly on the ground that the petitioner's earlier petition filed under Section 311 of Cr.P.C. was allowed and in spite of the presence of PW1, the petitioner has not chosen to cross-examine him. However, with a view to secure the ends of justice and with a view to enable the learned Magistrate to give just and right decision in the case, this Court is of the considered view that no prejudice would be caused in the event of allowing the petition to recall PW1 for cross-examination in order to rebut presumption contemplated under Section 139 of Negotiable Instruments Act. Therefore, this Court is constrained to set aside the impugned order passed by the learned Judicial Magistrate No. 1, Gobichettipalayam in CrI.M.P. No. 1124 of 2006 in C.C. No. 222 of 2007 dated 10.3.2006. The learned Judicial Magistrate No. 1, Gobichettipalayam in directed to recall PW1 for cross-examination within a period

of seven days from the date of receipt of a copy of this order enabling the petitioner herein to cross-examine PW1. It is made clear that the petitioner shall not prolong the proceedings and he should cross-examine PW1 within a period of two weeks from the date of appearance of PW1. The learned trial Magistrate is further directed to complete the trial, as the case itself is of the year 2006, as possible and more particularly within a period of two months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

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