

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.07.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.OP No.17227 of 2015
and M.P. No.1 of 2015

N.Durairaj .. Petitioner
Vs
C.Balakrishnan ... Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., praying to set aside the order passed in C.M.P.No.1197 of 2015 in S.T.C. No.96 of 2013 on the file of Fast Track Judicial Magistrate Court, Thiruthuraipoondi, Thiruvarur District and pending disposal of the above Cr1.OP.

For Petitioner :Mr.S.Arivazhagan

ORDER

This Criminal Original Petition has been filed praying to to set aside the order passed in C.M.P.No.1197 of 2015 in S.T.C. No.96 of 2013 on the file of Fast Track Judicial Magistrate Court, Thiruthuraipoondi, Thiruvarur District.

2. Heard Mr.S.Arivazhagan, the learned counsel appearing for the petitioner.

3. It is seen that this petitioner is facing prosecution for an offence under Section 138 of NI Act. The complainant was examined in chief as PW1 and this petitioner did not cross-examine the complainant. Therefore, the evidence of the complainant was closed by the Trial Court. This petitioner filed CMP. No.2223/2014 on the file of Judicial Magistrate, Thiruthuraipoondi (FTC) for recalling the complainant, which was also allowed by the Trial Court and PW1 was recalled.

4. PW1 was waiting for cross-examination the whole day, but neither the petitioner nor the counsel for the petitioner cross-examined him. Therefore, the evidence of PW1 was closed by the learned Judicial Magistrate, Thiruthuraipoondi. The petitioner again filed the present CMP.1197 of 2015, to recall PW1 and it has been rightly dismissed by the Trial Court on 24.04.2015, aggrieved by which, the petitioner/accused is before this Court.

5. Mr.S.Arivazhagan, the learned counsel appearing for the petitioner submitted that, on the day when the matter was posted for cross-examination of PW1, the counsel had gone elsewhere. In the considered opinion of this Court, that cannot be a reason for adjournment, in view of Section 309 of Cr.P.C., which reads as

follows :

"309 (b): the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment."

6. Therefore, absence of counsel cannot be a reason for granting adjournment. In fact, the Hon'ble Supreme Court in recent judgment in Vinod Kumar Vs. State of Punjab [2015 (1 Scale) 542], has issued Circulars to all the Trial Courts, that the cross-examination of the witnesses should be done on the very same day the chief examination is over.

7. Mr.S.Arivazhagan, the learned counsel appearing for the petitioner submits that if one opportunity is given to the petitioner, he will avail of it, failing which undue prejudice will be caused to the petitioner/accused. He also submitted that the cheque value is Rs.10,00,000/- and the defence of the accused should not be foreclosed.

8. This Court has to strike a harmonious balance between the right of the accused to cross-examine and the travails of the witness in the criminal prosecution and pass orders suitably.

9. Accepting the submissions of the learned counsel appearing for the petitioner, this Court directs the petitioner/accused to pay a sum of Rs.2,000/- as cost to PW1, before he gets into the witness box for cross-examination. It is stated that the case is adjourned to 13.07.2015.

10. This Court directs the Trial Court to permit the petitioner/accused to cross-examine PW1 on 15.07.2015. On that day, if the petitioner does not cross-examine the PW1, he will forfeit his right. Since this Court is monitoring the case, the Trial Court is directed to send a report to this Court, whether the petitioner/accused has co-operated in the trial.

11. For reporting compliance, post on 20.07.2015.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

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To
The Judicial Magistrate,
Fast Track Court, Thiruthuraipoondi.

Copy to: The Section Officer, Crl. Section, High Court, Madras.

1 cc to Mr.S.Arivazhagan , Advocate Sr.No.34947

Cr1.OP No.17227 of 2015

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