

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.06.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.OP.No.33129 of 2014

Kingsley Roy Singh

... Petitioner/Accused.

Vs

N.Devarajan

... Respondent/Complainant.

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to set aside the order closing the further cross examination of PW1 vide adjudication dated 28.11.2014 in STC.No.34 of 2014 on the file of the Judicial Magistrate, Fast Track Court [Magisterial Level], Ambattur.

For Petitioner : Mr.R.John Sathyan

O R D E R

This petition has been filed to set aside the order closing the further cross examination of PW1 vide adjudication dated 28.11.2014 in STC.No.34 of 2014 on the file of the learned Judicial Magistrate, Fast Track Court [Magisterial Level], Ambattur.

2. Heard the learned counsel for the petitioner and perused the materials placed on record.

3. At the time of admission itself, this Court felt that it will serve the interest of justice to pass final orders in this case, taking into consideration the peculiar facts and circumstances obtaining herein. The petitioner is facing trial for an offence under Section 138 of Negotiable Instruments Act in STC.No.34 of 2014 before the learned Judicial Magistrate, Fast Track Court [Magisterial Level], Ambattur.

4. After the examination of the accused under Section 313 Cr.P.C and when the matter was posted for arguments, the petitioner/accused filed Crl.MP.No.3593 of 2013 under Section 311 Cr.P.C for recalling PW1/complainant for the purpose of cross examination and the said petition was allowed by the Trial Court on 10.04.2014. Thereafter, the petitioner/accused has been regularly appearing before the Trial Court, but he was not able to cross examine the complainant as the complainant was absent. In support of his contention, the learned counsel for the petitioner has submitted the docket orders passed by the Trial Court.

"14.11.2014

Complainant absent. Petition filed and allowed. Accused present. For PW1. Cross finally. No further adjournment. Call on 21.11.2014.

21.11.2014

Complainant absent. Petition filed allowed. Accused present. For PW1 cross finally. No further adjournment. Call on 25.11.2014.

25.11.2014

Complainant absent. Petition filed and allowed. Accused present. For appearance of PW1 and PW1 cross finally. No further adjournment or for further proceeding. Call on 28.11.2014.

28.11.2014

Complainant present. Accused present. Learned counsel for accused not ready to cross PW1. Case posted on till 4.30p.m. Already sufficient chance have been given to the accused to cross examination of the PW1. Petition u/s 311 Cr.P.C was filed and allowed on 10.04.2014. Since 10.04.2014 case is pending for cross examination of PW1. In spite of that the accused is not ready to cross examine of PW1. Records perused. Case is pending from the year 2004. Already PW1 had been cross examined in length, at the time of DWs, the accused come up with the petition u/s 311 Cr.P.C same was also allowed by the court on merits. However learned counsel for accused not ready to cross examination of PW1. Hence PW1 further cross examination closed. For DWs. Call on 01.12.2014.

01.12.2014

Complainant present. Accused present. Learned counsel for accused not ready. At request for DWs. Call on 03.12.2014."

Now, the petitioner is aggrieved with the docket order dated 28.11.2014, whereby the learned Magistrate has closed CrI.MP.No.3593 of 2013 for the reason stated therein.

5. It is seen that the complainant has been continuously absent before the Trial Court from 14.11.2014 onwards. Whereas, the accused has been present throughout. Only on 28.11.2014, the complainant appeared, but the learned counsel for the accused on account of certain professional commitments, was unable to cross examine the witness. In the opinion of this Court, it would have

served the interest of justice, had the learned Magistrate given one more opportunity to the accused for cross examining the witness, instead of closing the petition on 28.11.2014. Under such circumstances, this Court is of the view that it will serve the interest of justice, if one more opportunity is given to the accused for cross examining PW1.

6. Mr. John Sathyan, learned counsel appearing for the accused submits that the matter is posted to 15.07.2015 and that the counsel will positively cross examine the witness.

7. Recording his submission, the docket order dated 28.11.2014 closing the petition under Section 311 Cr.P.C alone is set aside and the Trial Court is directed to permit the accused to cross examine PW1 on 15.07.2015. If PW1 is not present on 15.07.2015 for any reason, the Magistrate shall give another date, on which date, the accused should cross examine PW1.

8. With the above direction, this petition is ordered accordingly.

gva

s/d-
Deputy Registrar(J)

True Copy

Sub-Assistant Registrar

To

1. The learned Judicial Magistrate,
Fast Track Court [Magisterial Level],
Ambattur.
2. -do- thro The Chief Judicial Magistrate,
Kancheepuram.

+ 1 cc to Mr. R. John Sathyan, Advocate SR 30753

mg(co)
prk6/7

WEB COPY

CRL.OP.No.33129 of 2014