IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 7-9-2015

Coram

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.21217 of 2015

B. Murali Babu ... Petitioner

Vs.

P.C.Mohanasundaram ... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. with a prayer to call for the records in Crl.M.P.No.4960/2015 in S.T.C.No.560/2013 order dated 6.8.2015 on the file of the Judicial Magistrate Fast Track-I, Erode, and set aside the same and to recall the PW-1 for further cross-examination.

For Petitioner : Mr.K.Gandhi Kumar

For Respondent : Mr.C.Emalias,
Additional Public Prosecutor

O R D E R

On 25.8.2015, this Court passed the following order:

"2. It is seen that this petitioner is facing trial for an offence under Section 138 of Negotiable Instruments Act in STC.No.560 of 2013 on the file of the learned Judicial Magistrate, Fast Track Court-I, Erode. The complainant was examined as PW1 and he was not cross-examined by the accused immediately. After the accused was examined under Section 313 Cr.P.C., he filed an application under Section 311 Cr.P.C. for cross-examining the complainant and that petition was allowed by the Trial Court on 02.06.2015. Thereafter, the accused cross-examined PW1 on 17.06.2015. The accused once again filed CMP.No.2960 of 2015 for recalling PW1 for further cross-examination which was dismissed by the Trial Court on 06.08.2015 challenging which, the accused is before this Court.

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3. This Court does not find any serious infirmity in the order passed by the Trial Court. However, learned counsel for the petitioner submitted that though the accused cross-examined PW1 on 17.06.2015, the cross could not be completed on the same day for want of time. Therefore, he had to necessarily file a fresh application for re-calling PW1 under Section 311 Cr.P.C.

4. This Court perused the deposition of PW1. If an accused is not able to complete the cross-examination of a witness on a particular date for want of time, the Magistrate will normally make an endorsement to that effect ín the deposition itself and will adjourn the case for further cross-examination to another date. In this case, no such endorsement has been made by the learned Trial Judge in the deposition of PW1.

5. This Court read the deposition and observed that the counsel has not even put the usual suggestions that are normally put at the end of the cross-examination. Under such circumstances, this Court is of the view that interest of justice will be served, if one time bound opportunity is given to the petitioner/accused to cross-examine PW1.

6. In the result, this Court directs the Trial Court to permit the petitioner/accused to cross-examine PW1 on a date fixed by the Trial Court. The petitioner/accused shall pay a cost of Rs.2,500/- to PW1, before he gets into the witness box. The petitioner/accused shall not adopt dilatory tactics. If he adopts any tactics, he will forfeit his right to cross-examine PW1. Since this Court is monitoring this case, the Trial Court is directed to send a report to this Court immediately after cross-examination of PW1.

Post "For Orders" on 07.09.2015."

2. Today, the learned Counsel appearing for the petitioner submitted that the accused paid Rs.2,500/- to PW-1 and PW-1 was cross-examined before the trial Court, and written arguments have also been filed.

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Recording the above submission, this petition is closed.

vr

s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To

The Judicial magistrate,
Fast Track Court (1)
Erode.

vsn(co)
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