

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2015

CORAM

THE HON'BLE MR. JUSTICE R.S.RAMANATHAN

Crl.O.P.No.7933 of 2015
and M.P.No.1 of 2015

Chandiya

...Petitioner

vs.

Ranganathan

...Respondent

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to set aside the order, dated 02/09/2014 made in C.M.P.No.3394 of 2014 in S.T.C. No.504 of 2013 on the file of the Judicial Magistrate No.IV, Salem.

For Petitioner : Ms.D.Sathya

O R D E R

This Petition has been filed seeking to set aside the order, dated 02.09.2014, passed by the learned Judicial Magistrate No.IV, Salem, in Crl.M.P.No.3394 of 2014 in S.T.C.No.504 of 2013.

2. It is submitted by the learned counsel appearing for the petitioner that the petitioner is an accused in the abovesaid case, and though on earlier occasion, the Petition filed by the petitioner under Section 311 Cr.P.C. was allowed, the petitioner was unable to cross-examine PW1 due to non-availability of the Advocate appearing for him, and therefore, the case was posted for arguments. Thereafter, the petitioner filed another Petition under Section 311 Cr.P.C. to recall PW1. As the said Petition was dismissed, without giving any opportunity to the petitioner to cross-examine PW1, this Criminal Original Petition is filed to set aside the said dismissal order.

3. The learned counsel appearing for the petitioner further submitted that PW1, who is the de-facto complainant/respondent herein is appearing before the Court below and no prejudice would be caused to the respondent by permitting the petitioner to cross-examine, and the petitioner would also complete the cross-examination of P.W.1, on the same date.

4. I am unable to accept the contention of the learned counsel appearing for the petitioner. It is seen from the impugned order that on earlier occasion, the petitioner filed C.M.P.No.6276 of 2013 for recalling P.W.1 and that was allowed on 29.04.2014. Thereafter, the petitioner did not cross-examine PW1, and the case was adjourned to 02.06.2014, 30.06.2014, 09.07.2014, 21.07.2014 and 30.07.2014, and all those dates, PW1/complainant was present, but the petitioner/accused was absent. Therefore, on 30.07.2014, evidence was closed and the case was adjourned for arguments, and at that point of time, the Petition, viz., C.M.P.No.3394 of 2014 was filed by the petitioner. Hence, the Trial Court has rightly dismissed C.M.P.No.3394 of 2014, and I do not find infirmity in the order passed by the Trial Court.

5. In the result, the Criminal Original Petition is dismissed. Consequently, connected M.P.No.1 of 2015 is closed.

ds/sd

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

The Judicial Magistrate No.IV, Salem.

+ 1 cc to M/s.D.Sathya, Advocate SR 17459

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Cr1.O.P.No.7933 of 2015

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