

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2015

Coram

THE HONOURABLE MR. JUSTICE R.S.RAMANATHAN

Crl.O.P.No.27422 of 2010

and

M.P.No.1 of 2010

M.Jothimani ..Petitioner/Single Accused

/vs/

S.S.Mahalingam ...Respondent /Complainant

Prayer:

Criminal Original Petition filed under Section 482 of Criminal Procedure Code praying to call for the records of the order dated 01.11.2010 made in Crl.M.P.No.4287/2010 in C.C.No.331/2008 on the file of the learned District Munsif cum Judicial Magistrate, Perundurai and set aside the same.

For Petitioner :Mr.P.M.Duraiswamy
For Respondent :Mr.N.Manokar

ORDER

This petition is filed challenging the order passed in Crl.M.P.No.4287 of 2010 in C.C.No.331 of 2008 on the file of the District Munsif cum Judicial Magistrate, Perundurai.

2.The petitioner is the accused in C.C.No.331 of 2008 and the respondent filed the above complaint. The respondent examined himself as P.W.1 and the chief examination was conducted on 13.11.2009 and the respondent was re-called and cross examination was over on 26.08.2010. Thereafter, the case was posted for defence witness and the petitioner did not examine any witness on his side and filed a petition under Section 45 of Evidence Act for sending the document for expert opinion and that was also dismissed and thereafter, filed the present petition to re-call PW1 stating that PW1 was not effectively cross examined and for that purpose PW1 has to be recalled for further cross examination and that petition was dismissed. Aggrieved by the same, this petition is filed.

3.The learned counsel appearing for the petitioner submitted that while hearing the petition, this Court has directed the

petitioner to pay a sum of Rs.5,000/- as cost on the next date of hearing to the learned counsel for the respondent and the petitioner is prepared to pay Rs.5,000/- as cost and therefore, the petition is to be allowed. He further submitted that on earlier occasion, on the side of the respondent, PW1 was cross examined in part and he was not fully examined and one more opportunity may be given to the petitioner to cross examine PW1.

4.I am unable to accept the contention of the learned counsel appearing for the petitioner. It is seen from the docket order that on 29.11.2010, it was represented by the learned counsel for the petitioner that he was prepared to pay Rs.5,000/- as cost to the respondent/complainant and that was recorded by this Court. No order was passed by this Court that the petition would be allowed on payment of cost of Rs.5,000/-. The contention of the learned counsel appearing for the petitioner that this Court has directed to the petitioner to pay Rs.5,000/- as cost for allowing the petition, cannot be accepted. It is seen from the order that cross examination of PW1 was over on 26.08.2010 and the case was adjourned to 04.09.2010, 18.09.2010, 22.10.2010 and 26.10.2010 and thereafter, the case was posted for defence side evidence and the petitioner did not examine any witness on his side. On the other hand, the petitioner filed a petition in C.M.P.No.4796 of 2009 under Section 45 of Evidence Act, which was dismissed and thereafter, the present petition in Crl.M.P.No.4287 of 2010 was filed to re-call PW1 for further cross examination. It is also seen that the cross examination was conducted on 26.08.2010 and that PW1 was effectively cross examined at length. However, considering the number of adjournment granted at the instance of the petitioner, the trial court has rightly dismissed the application holding that he has clearly abused of process of Court. Therefore, there is no need to interfere with the order passed by the trial Court. Hence, this petition is liable to be dismissed. Accordingly, the criminal original petition is dismissed. However, the learned Judicial Magistrate concerned is directed to dispose of the case within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

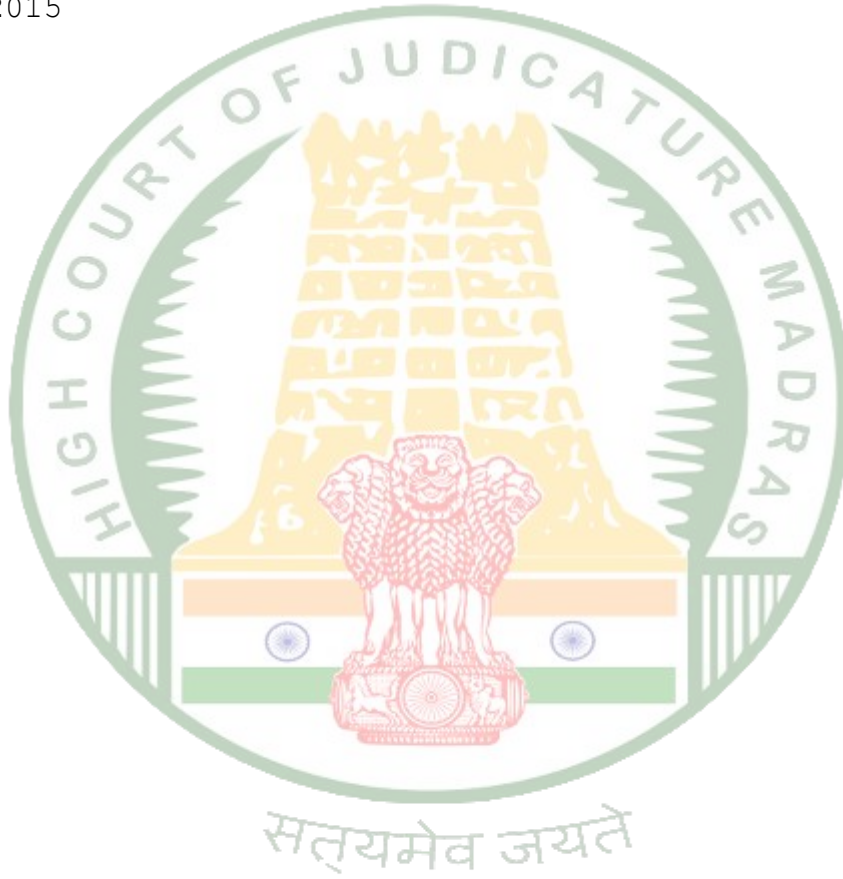
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To
The learned District Munsif cum Judicial Magistrate,
Perundurai.

1 cc to Mr.P.M.Duraiswamy , Advocate Sr.No.28827/15
1 cc to Mr.N.Manokar , Advocate Sr.No.28175/15

Cr1.O.P.No.27422 of 2010

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