

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP No.18373 of 2016

Senthil Kumar

..Petitioner/Accused

Vs

Sudharshan

.. Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to quash the order dated 19.07.2016 in Crl.M.P.No.3023/2016 in S.T.C.No.118/2016 on the file of Judicial Magistrate Court, Arni, Thiruvannamalai District dated 19.07.2016 and allow the petitioner to cross-examine PW2.

For Petitioner : Mr.V.T.Narendiran

O R D E R

This petition has been filed to quash the order dated 19.07.2016 in Crl.M.P.No.3023/2016 in S.T.C.No.118/2016 on the file of Judicial Magistrate Court, Arni, Thiruvannamalai District dated 19.07.2016 and allow the petitioner to cross-examine PW2.

2. Heard the learned counsel appearing for the petitioner.

3. It is seen that the petitioner is facing prosecution in S.T.C.No.118 of 2016 under Section 138 of the Negotiable Instrument Act before the Judicial Magistrate Court, Arni. While so, the complainant examined the Bank Manager/PW-2 on 06.03.2015 and on that date, the petitioner did not cross-examine the Branch Manager. Thereafter, the petitioner has filed an application under Section 311 Cr.P.C. to recall PW-2, which was dismissed by the trial Court on 19.07.2016 in Crl.M.P.No.3023 of 2016 in S.T.C No.118 of 2016, challenging which, the petitioner/accused is before this Court.

4. Mr.V.T.Narendiran, learned counsel for the petitioner / accused submitted that one opportunity may be given to cross examine PW-2.

5. On a perusal of the petition filed by the petitioner

under Section 311 Cr.P.C., he has not even given any cogent reasons for recalling PW-2. The petitioner has simply stated that at the time, PW-2 came for giving evidence, he did not have necessary records and that, he has got the necessary records now. Therefore, PW-2 should be recalled.

6. It is true that under section 311 Cr.P.C., the trial court has got the power to recall any witness at any time before judgment is delivered. But, at the same time, the petitioner should make out a prima facie case to satisfy the Court why a witness was not cross examined, when he was examined in chief and the petitioner should also further give substantial reasons justifying the recall of the witness. The accused shall cross-examine the witnesses on the same day, they are examined in-chief as directed by the Supreme Court in Vinoth Kumar vs. State of Punjab [2015(1) MLJ (crl) 288].

7. In this case, PW-2 Bank witness was produced by the complainant for examination but for reasons best known to the petitioner, he did not choose to cross examine the Branch Manager and thereafter, he has now filed a petition without even giving proper reasons for recalling the Branch Manager, which has been rightly dismissed by the trial court.

This Court does not find any infirmity in the order passed by the trial Court. Hence, this criminal original petition is dismissed.

s/d-

Assistant Registrar(CS-VI)

True Copy

Sub-Assistant Registrar

kmi/sms

To

1. The Judicial Magistrate Court,
Arni, Thiruvannamalai District.
2. The Public Prosecutor,
High Court, Madras.

Cr1.OP No.18373 of 2016

GJY (CO)

MD : 07/09/2016