

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.OP No.21820 of 2016

Vincent Petitioner

Vs

Saraswathy Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the order passed by the learned Fast Track Court Magisterial level, II, Poonamallee, Tiruvallur District in dismissing the petition filed by the petitioner herein Cr1.M.P.No.2128 of 2016 in S.T.C.No.246 of 2013 dated 02.09.2016.

For Petitioner : Mr.K.Shahul Hameed

For Respondent : Mr. L.Srilekha

ORDER

This Criminal Original Petition has been filed to set aside the order passed by the Fast Track Court Magisterial level, II, Poonamallee, Tiruvallur District in dismissing the petition filed by the petitioner in Cr1.M.P.No.2128 of 2016 in S.T.C.No.246 of 2013 dated 02.09.2016.

2. For the sake of convenience, the parties will be referred to, by their name.

3. Saraswathy has initiated prosecution in STC No.246 of 2013 under Section 200 Cr.P.C r/w 138 of the Negotiable Instruments Act against Vincent and the same is now pending before the Fast Track Court, Magisterial Level No.II, Poonamallee, Tiruvallur District.

4. Vincent is a RPF Constable. Saraswathy was examined in-Chief during the month of August, 2014 and thereafter, she was not cross-examined by Vincent and he was adopting dilatory tactics by frequent by absconding and recalling NBW periodically. Further, Vincent filed a petition in CMP.No.2128

Of 2016 in STC No.246 of 2013 under Section 311 Cr.P.C to

recall PW1/Saraswathy for the purpose of cross-examination, which has been dismissed by the trial Court on 02.09.2016, challenging which, Vincent is before this Court.

5. Heard Mr.K.Shahul Hameed, learned counsel for Vincent and Ms. L.Srilekha, learned counsel for Saraswathy.

6. The learned counsel for Saraswathy strongly opposed the plea of Vincent and submitted that he has been making the old lady run from pillar to post for the last 4 years and he deserves no sympathy.

7. Per contra, the learned counsel for Vincent submitted that if one opportunity is not given to Vincent to cross-examine Saraswathy, undue prejudice will be caused to him in the case.

8. This Court gave its anxious consideration to the rival submission.

9. In a case of this nature, where the accused has to discharge the burden under Section 139 of the Negotiable Instrument Act, it may be necessary to grant one opportunity to Vincent to cross-examine Saraswathy on certain stringent conditions. Hence, Vincent is directed to appear before the trial Court within a period of two weeks from the date of receipt of a copy of this order and on his appearance, he shall be released on bail under Section 436 Cr.P.C., on his furnishing a bond for a sum of Rs.5,000/- with two sureties to the satisfaction of the Magistrate. Thereafter, on a date fixed by the Magistrate, Saraswathy shall appear and on the appearance of Saraswathy, Vincent shall pay her Rs.3,000/- as cost and on the same day, she should be cross-examined by Vincent. If Vincent absconds, the Magistrate shall direct the registration of separate case against Vincent under Section 229-A IPC for abscondance, which is a cognizable offence or non-bailable offence and intimate the same to the commandant RPF. If Vincent adopts any dilatory tactics, it is open to the trial Court to remand him to custody in terms of the law laid down by the Supreme Court in State of Uttar Pradesh v. Shambjunath Singh [JT 2001 (4) SC 319].

With the above directions, the criminal original petition is closed.

sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. Fast Track Court Magisterial level,
II, Poonamallee, Tiruvallur District.

+1 C.C.to Mr. K. Shahul Hameed, Advocate, SR.NO.55091

+1 C.C.to Mrs. R. Meenakshi, Advocate, SR.No.55148

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SCP(CO)
SSM/22/10/2016



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