

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2016

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. No.23239 of 2016

and

Crl.M.P.Nos.10871 and 10872 of 2016

S.Somasundaram

Petitioner

vs.

M/s Arihant Retail P Ltd
No.92 GA Road
Old Washermenpet
Chennai 600 021
rep by its authorised
Mr.S.Gopi

Respondent

Criminal Original Petition filed under Section 482, Cr.P.C. to set aside the order dated 12.08.2016 passed by the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai-1, in Crl.M.P.No.5201 of 2016 in C.C.No.3401 of 2014.

For petitioner Mr.R.Selvakumar

ORDER

This petition has been filed to set aside the order dated 12.08.2016 passed by the Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai-1, in Crl.M.P.No.5201 of 2016 in C.C.No.3401 of 2014.

2. Heard the learned counsel for the petitioner.

3. The complainant lodged a complaint in C.C.No.3401 of 2014 u/s 138 of the Negotiable Instruments Act and the same is now pending on the file of the Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai-1. The complainant was examined-in-chief as early as 04.05.2015 and was subjected to cross examination by the accused on 06.01.2016 and 07.03.2016. Thereafter, the case was posted for defence witness. Since no defence witness was produced, the case was closed and the matter was posted for arguments on 15.06.2016, 22.06.2016, 04.09.2016 and 20.09.2016. At that juncture, the petitioner filed Crl.M.P.No.5201 of 2016 to once against recall P.W.1 for further cross examination, which was dismissed by the trial Court on 12.08.2016, aggrieved by which the accused is before this.

4. The learned counsel for accused submitted that there is no debt at all in this case, inasmuch as the cheque itself was admittedly given for certain amounts that is alleged to have been misappropriated by the accused. He also contended that P.W. 1 should be recalled in the interest of justice.

5. This Court gave its anxious consideration to the rival submissions.

6. It is seen that earlier the accused filed CrI.M.P.No.9388 of 2015, based on which P.W.1 was recalled by the Court and was subjected to thorough cross examination on two dates. Under such circumstances, the petitioner has not made out a case for once again recalling P.W.1.

7. In A.G. Vs. Shiv Kumar Yadav and another, [(2015) 9 Scale 649], and State of Haryana v. Ram Mehar [(2016) 8 Scale 192], the Supreme Court has laid down the parameters for recalling prosecution witnesses. Had the accused not cross examined P.W.1 at all, the issue may be different. Admittedly, this petition to recall has been filed only at the stage of arguments without any sound reasons.

In the result, this petition is dismissed as devoid of merits. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

1.The Metropolitan Magistrate,
Fast Track Court No.IV, George Town,
Chennai-1

2.The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.R.Selvakumar,advocate,sr.60086.

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CrI.O.P. No.23239 of 2016