

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2017

CORAM:

THE HON'BLE DR.JUSTICE **S.VIMALA**

Criminal Revision Case No.1239 of 2017
& CrI.M.P.No.11877 of 2017

M.Manoj Prabhu ... Petitioner / accused

..Vs..

KGISL Technologies and Infrastructure Pvt. Ltd.,
Rep. by its Project Engineer, Mr. R.Rajivkumar,
365, KGISL Campus, Thudiyalur Road,
Saravanampatti, Coimbatore 641 035 ... Respondent / complainant

Criminal Revision Petition filed under Section 397 read with 401
of the Criminal Procedure Code, against the order, dated 19.06.2017
passed in C.M.P.No.4653 of 2017 in C.C.No.196 of 2014 on the file of
the learned Judicial Magistrate, Fast Track Court No.1, Coimbatore.

For Petitioner : Mr. J.Pothiraj
For Respondent : Mr. K.Jayachandran

ORDER

The accused / petitioner herein filed an application before the
Court below, to recall P.W.2, for cross-examination. The complainant
has given an endorsement of No Objection but on terms. Based on
the endorsement made by the complainant, the learned Magistrate has

passed a conditional order, directing the accused to cross-examine P.W.2 on the next date of hearing itself. This condition has not been obeyed. Therefore, the automatic dismissal of the petition had occasioned. Challenging the same, this Criminal Revision Case has been filed.

2. According to the learned counsel appearing for the petitioner / accused, the cross-examination of P.W.2 is vital and critical on the merits of the matter and therefore, one more opportunity must be given to establish the case on merits.

3. The learned counsel appearing for the respondent / complainant pointed out that the conduct of the accused, in taking effective steps in procrastinating the matter and in not cooperating with the speedy disposal of the case, is apparent and that the lost opportunity cannot be restored.

4. No doubt, the accused should not be permitted to prolong the trial, but at the same time, opportunity must be given to cross examine the witness to substantiate the case on merits, as the opportunity provided by the Magistrate cannot be construed as

sufficient opportunity. Therefore, this Court is of the view that the accused must be put on strict terms, so that, cross examination of P.W.2 is completed at the earliest point of time.

5. Considering the totality of circumstances, the accused / petitioner herein is permitted to cross-examine P.W.2 subject to the pre-condition that the accused / petitioner herein: (i) shall deposit a sum of Rs.1,00,000/- (Rupees one lakh only) to the credit of C.C.No.196 of 2014 before the learned Judicial Magistrate, Fast Track Court No.1, Coimbatore, on or before 09.10.2017; and also (ii) shall pay a sum of Rs.5,000/- (Rupees five thousand only), as costs, to the learned counsel appearing for the complainant / respondent herein before this Court, on or before 09.10.2017.

6. Subject to the above two conditions and on proof being adduced for the same before the Court below, the accused / petitioner herein will be permitted to cross-examine P.W.2, on 09.10.2017 and/or 10.10.2017. Without insisting upon the petition to Advance Hearing being filed, the learned Magistrate shall take up the case on 09.10.2017 or 10.10.2017 subject to the convenience of both sides. The accused shall cross-examine the witness either on 09.10.2017 or

on 10.10.2017.

7. It is represented by the learned counsel appearing for both sides that the case is posted for judgment, on 10.10.2017, before the Court below.

8. Needless to point out that the learned Magistrate shall defer the judgment on 10.10.2017 and after the cross examination of P.W.2 is over, the learned Magistrate shall provide opportunity of hearing to both sides and to pass Judgment as early as possible.

9. With the above directions, this Criminal Revision Case is disposed of. No costs. Consequently, the connected CrI.M.P. is closed.

06.10.2017

Index : Yes / No

Web : Yes / No

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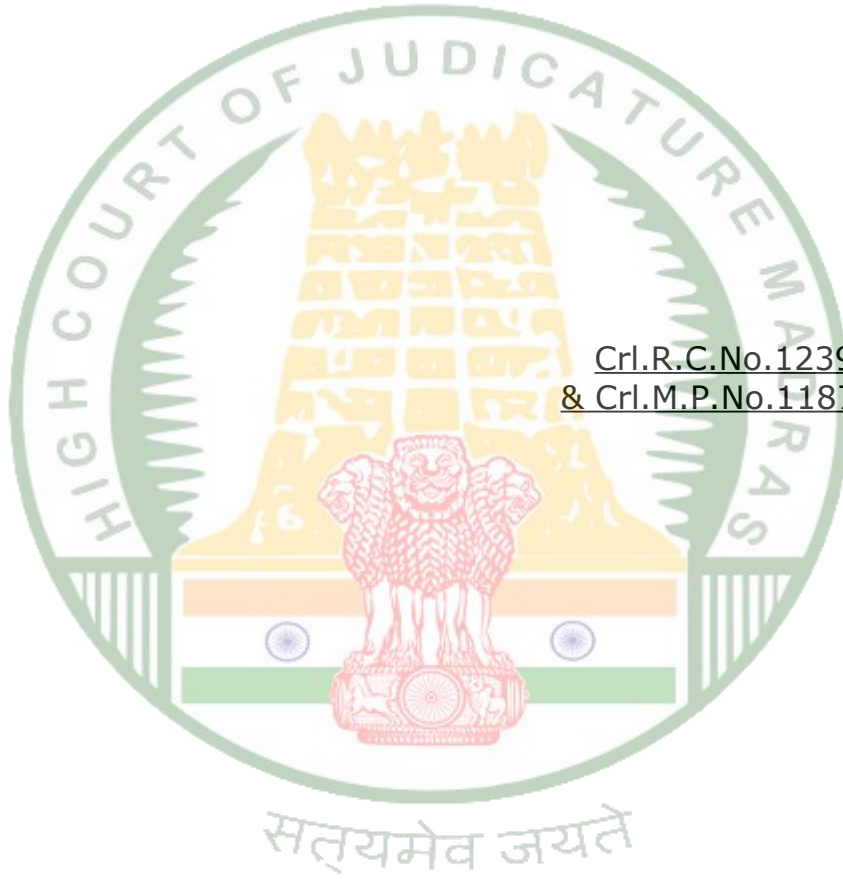
Note to office.: Issue order copy today (06.10.2017)

To

1. The Judicial Magistrate, Fast Track Court No.1, Coimbatore.

Dr. S.VIMALA, J.,

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