

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2017

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

CrI.O.P.No.5554 of 2017

and

CrI.MP.No.4153 of 2017

G.Pasupathi

... Petitioner

Vs

M.Thiyagarajan

... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the adjudication order dated 01.03.2017 closing the evidence of P.W.1 in CC No.5804 of 2006 on the file of Fast Track Court No.III, Metropolitan Magistrate, Saidapet, Chennai and to direct the learned Magistrate to permit further cross examination of PW1 by recalling PW1.

For Petitioner : Mr.S.Kalyanaraman

For Respondent : Mr.V.Murugesan

ORDER

This Criminal Original Petition has been filed to set aside the order dated 01.03.2017 passed by the learned Metropolitan Magistrate, Fast Track Court No.III, Saidapet, Chennai in CC No.5804 of 2006 and to direct the learned Magistrate to permit the petitioner to further cross examination of PW1 by recalling PW1.

2. The case of the petitioner is that the respondent has filed a private complaint against him, for the alleged offence punishable under Section 138 of the Negotiable Instruments Act and the same was taken on file as CC No.5804 of 2006 by the learned Metropolitan Magistrate, FTC-III, Saidapet, Chennai. Subsequently, summons was issued and the petitioner has entered appearance. Thereafter, trial has commenced, during

which, the complainant was examined as P.W.1 and was cross examined by the petitioner's counsel. The petitioner and his witnesses were examined as D.W.1 to D.W.3. While so, the respondent had filed MP.No.3776 of 2016 to reopen his evidence for marking certain documents. The said petition was allowed and certain documents were marked. At this stage, the petitioner has filed a petition under Section 311 Cr.P.C to recall PW1 for the purpose of further cross examination. By order dated 27.01.2017, the said petition was allowed and the case was posted for further cross examination of PW1 on 09.02.2017. Again, the case stood adjourned to 22.02.2017, on which date, cross examination was continued, but was not completed due to want of time and hence, the case was adjourned to 01.03.2017 finally. On 01.03.2017, the petitioner was unable to continue further cross examination, due to non-appearance of P.W.1. However, by order dated 01.03.2017, the learned Judge has closed the evidence. Aggrieved over the same, the petitioner has come up with the present petition for the above stated relief.

3. Learned counsel for the petitioner submitted that without providing opportunity to the petitioner to cross examine PW1, the trial court has closed the evidence, by order dated 01.03.2017, which is per se illegal and is liable to be set aside.

4. On the other hand, learned counsel for the respondent fairly submitted that the respondent / complainant / PW1 will appear before the trial court on a particular date as directed by this Court and on such appearance, cross examination be continued by the petitioner. The said statement is recorded.

5. In view of the submission so made by the leaned counsel for the respondent, the order dated 01.03.2017 passed by the learned Metropolitan Magistrate, FTC-III, Saidapet, Chennai in CC No.5804 of 2006 is set aside. The respondent /complainant/ PW1 is directed to appear before the trial court on 26.04.2017, on which date, the petitioner is permitted to cross examine PW1 and complete the same on that day itself. It is made clear that no further adjournment be granted and no Section 311 Cr.P.C petition be entertained by the trial Court. The learned Magistrate is directed to complete the trial and dispose of the case in CC No.5804 of 2006 on merits and in accordance with law, as expeditiously as possible.

6. This Criminal Original Petition is ordered accordingly.
Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

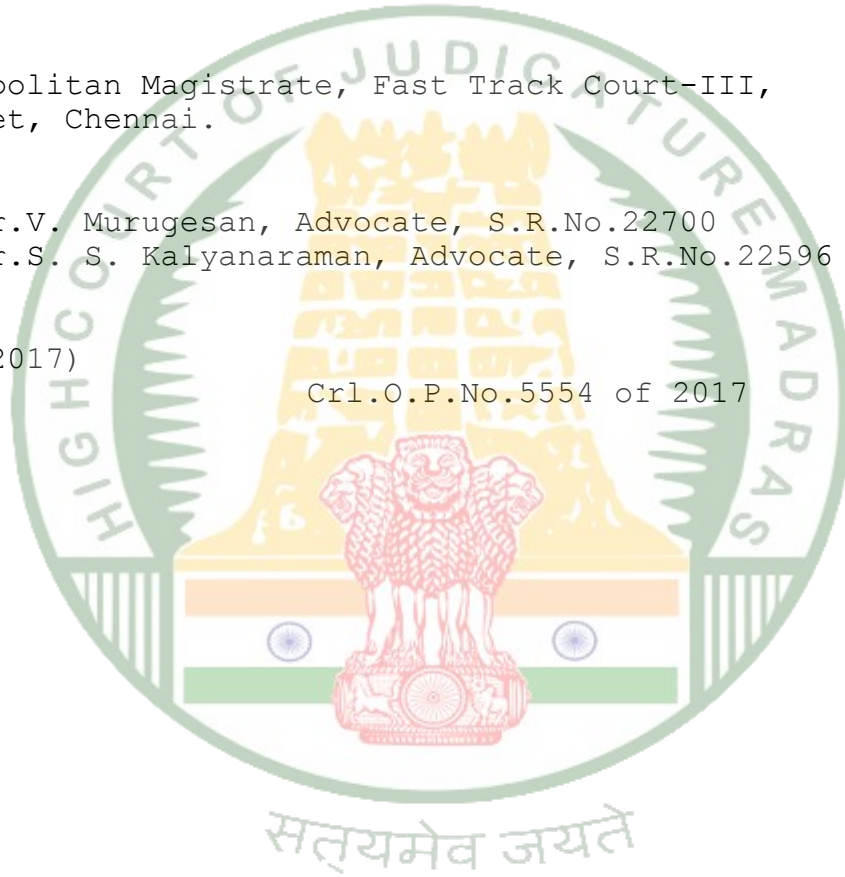
To

The Metropolitan Magistrate, Fast Track Court-III,
Saidapet, Chennai.

+1cc to Mr.V. Murugesan, Advocate, S.R.No.22700
+1cc to Mr.S. S. Kalyanaraman, Advocate, S.R.No.22596

vsn(CO)
md(24/04/2017)

Cr1.O.P.No.5554 of 2017



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