



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRL.OP.(MD)No.12630 of 2017 and
CRL.M.P.(MD)No.8718 of 2017

Samraj

...Petitioner/Accused

Vs.

G.Raveendran Nair

...Respondent/Complainant

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to set aside the order dated 25.07.2017 passed in S.T.C.No.603 of 2016 on the file of the learned Judicial Magistrate, Padmanabhapuram, by allowing this Criminal Original petition.

For Petitioner : Mr.R.Murugan

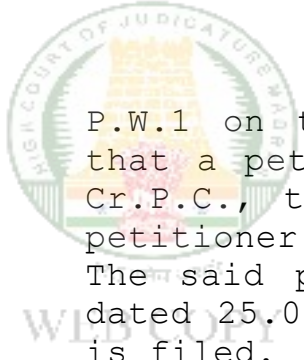
O R D E R

This Criminal Original petition is filed to set aside the order, dated 25.07.2017 passed in S.T.C.No.603 of 2016 on the file of the learned Judicial Magistrate, Padmanabhapuram.

2. Heard the learned counsel appearing for the petitioner.

3. It is stated that the petitioner is the accused in the criminal proceedings S.T.C.No.603 of 2016 before the learned Judicial Magistrate, Padmanabhapuram, Kanyakumari District, for the offence under Section 138 of Negotiable Instruments Act. It is further stated that P.W.1 was examined on 28.06.2017 and few documents were marked.

<https://hcservices.courts.gov.in/hcservices/> It appears that though the case was posted for cross examination of P.W.1 at the request of the petitioner before the lower Court on 10.07.2017, the petitioner did not cross examine



P.W.1 on the said date. In the above circumstances, it appears that a petition was filed by the petitioner under Section 311 of Cr.P.C., to recall P.W.1 for cross examination, stating that the petitioner could not avail the earlier opportunity for reasons. The said petition was dismissed by the lower Court by an order dated 25.07.2017. Challenging the said order, the above petition is filed.

5. This Court find that the petitioner is entitled to a further opportunity. Merely because the petitioner has not availed the earlier opportunity of cross examination, the petitioner cannot be denied such opportunity if there are reasons as it will cause great prejudice to the defence, in the criminal case.

6. Considering the facts and circumstances of the case, this Court is also of the view that the Criminal Original petition can be allowed on terms.

7. As a result, the Criminal Original petition is allowed and the order passed by the learned Judicial Magistrate, Padhmanabhapuram, in S.T.C.No.603 of 2016, dated 25.07.2017, is set aside and the petition filed by the petitioner in S.T.C.No.603 of 2016 under Section 311 of Cr.P.C., stands allowed. However, the petitioner is directed to cross examine the witness P.W.1 on the date when the witness is available for cross examination, without getting any further adjournment on any ground. This order is also subject to the payment of Rs.5,000/- (*Rupees Five Thousand only*) towards cost payable to the respondent within a period of three weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub-Assistant Registrar

To

1. The Judicial Magistrate, Padhmanabhapuram.
 2. Do through the Chief Judicial Magistrate,
Kanyakumari at Nagercoil
 3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- +One cc to Mr.R.Murugan, Advocate, SR.No.80528

pmu

RL/5C/2P/SKN/RSK/SAR1/5/10/2017

CRL.OP.(MD)No.12630 of 2017