



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2017

CORAM:

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

CRL.O.P. (MD) No.1915 of 2017

and

Cr1.M.P. (MD) No.1523 of 2017

Jayamurugan

: Petitioner/Respondent

-Vs-

Mary Vasantha

: Respondent/Petitioner

PRAYER: Petition is filed under Section 482 of the Criminal Procedure Code praying to call for the records and set aside the order dated 09.04.2016 passed in Cr.M.P.No.2396 of 2016 in C.C.No.492 of 2013 on the file of the Judicial Magistrate Court, Valliyoor.

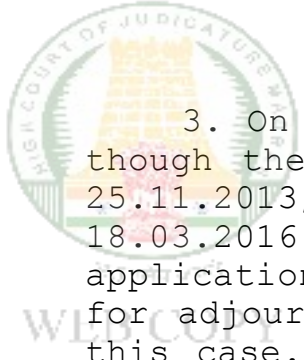
For Petitioner

: Mr.M.P.Senthil

O R D E R

The petitioner is facing prosecution in C.C.No.492 of 2013 for an offence under Section 138 of the Negotiable Instruments Act, on the complaint lodged by Mary Vasantha. Mary Vasantha was examined in chief and she was cross-examined by the petitioner. Thereafter, the petitioner filed an application under Section 311 of the Code of Criminal Procedure, for recalling P.W.1 and for further cross-examination on the ground that he has failed to ask some questions about legal aspects. The Trial Court allowed the application and recalled the complainant. The complainant appeared before the Trial Court on 18.03.2016 and on that day, the accused was present, but, his counsel did not cross-examine the complainant. No reasons were given by the accused for not cross-examining the complainant. Therefore, the Trial Court dismissed Cr.M.P.No.2396 of 2016, that was filed by the petitioner for cross-examination of P.W.1, challenging which, the accused is before this Court.

2. The learned counsel for the accused submitted that the accused had earlier filed a petition under Section 311 of the Code of Criminal Procedure, which was allowed by the Trial Court on 25.11.2013, but, whereas, the complainant did not appear for cross-examination at all and that only on 18.03.2016, when she appeared, on account of the counsel for the accused being held elsewhere, he did not cross-examine the complainant.



3. On a scrutiny of the records in this case, it is seen that though the earlier petition filed by the accused was allowed on 25.11.2013, the complainant appeared before the Trial Court on 18.03.2016 and on that day, the accused could have filed an application under Section 309 of the Code of Criminal Procedure for adjournment giving reasons. That has also not been done in this case. P.W.1 is aged about 60 years and she has already been cross-examined by the accused earlier. Just because the accused had missed out certain points and that he has to cross-examine her in respect of some legal aspects, she cannot be further re-called for cross-examination.

4. In the result, this Court does not find any serious infirmity in the order passed by the Court below warranting interference and hence, this Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

/True copy/

Sub Assistant Registrar

To
The Judicial Magistrate Court,
Valliyoor.

+1 CC to M/s.M.P.SENTHIL, Advocate, SR No. 13530

SML

PSM/PN/20.03.2017/2P/3C

Order made in
CRL.O.P.(MD) No.1915 of 2017
Dated: 09.03.2017