



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

WEB COPY

CRL.O.P. (MD) No.1964 of 2017

and

CRL.M.P. (MD) No.1551 of 2017

Mr.Picco

: Petitioner

-Vs-

Mr.Deivendaran

: Respondent

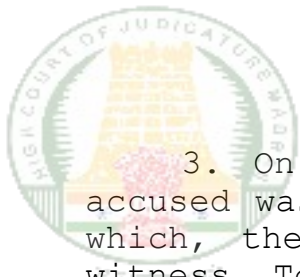
PRAYER: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code to call for the records and set aside the order passed in Cr.M.P.No.1057 of 2017 in S.T.C.No.624 of 2013, dated 09.02.2017 on the file of the Learned Judicial Magistrate No-1, Fast Track Court at Magistrate Level, Madurai.

For Petitioner : Mr.J.Mathesh

O R D E R

The petitioner is facing prosecution in S.T.C.No.624 of 2013, for an offence under Section 138 of the Negotiable Instruments Act, before the learned Judicial Magistrate No.I, Fast Track Court at Magistrate Level, Madurai. After the prosecution evidence was closed, the petitioner was examined under Section 313 of the Code of Criminal Procedure. Thereafter, the petitioner filed an application under Section 315 of the Code of Criminal Procedure for examining himself as a witness, which was allowed by the Trial Court. The matter was posted to 24.10.2016 for the examination of the accused. On that day, the accused did not appear before the Court and filed an application under Section 317 of the Code of Criminal Procedure, contending that he was sick. Therefore, the learned Magistrate was pleased to give a long adjournment to the case and posted the case to 05.11.2016. On 05.11.2016 also, the accused did not appear before the Trial Court and, therefore, the learned Magistrate closed the petition on that day. The matter was adjourned to 14.11.2016 and from 14.11.2016, the case was adjourned to 23.11.2016, 07.12.2016, 15.12.2016, 05.01.2017, 17.01.2017 and 04.02.2017. The matter was getting adjourned on the ground that the parties are arriving at a settlement. Thereafter, the accused has filed another petition under Section 311 of the Code of Criminal Procedure, for examining himself as a witness, which was dismissed by the Trial Court on 09.02.2017, challenging which, the accused is before this Court.

2. The learned counsel for the petitioner contended that the accused was physically indisposed and, therefore, he did not examine himself as a witness earlier.



3. On a reading of the impugned order, it is seen that the accused was given sufficient opportunity by the Magistrate, despite which, the accused did not come forward to examine himself as a witness. Totally exasperated, the Magistrate closed the proceedings. Once again, the accused filed a fresh application under Section 311 of the Code of Criminal Procedure and the Magistrate had dismissed the same, by relying upon Section 143(3) of the Negotiable Instruments Act.

4. The learned counsel for the petitioner submitted that in the interest of justice and fair play, the accused should be given an opportunity.

5. In a case where no opportunity was given, the discretionary power of this Court under Section 482 of the Code of Criminal Procedure can be exercised. However, in this case, sufficient opportunities were given to the accused, but, he did not make use of the same. Under such circumstances, this Court does not find any infirmity in the order passed by the Trial Court warranting interference. Hence, this petition is dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CSIII)

/True Copy/

Sub-Assistant Registrar

To

1.The Judicial Magistrate No-1,
Fast Track Court at Magistrate Level,
Madurai.

2.-Do-thro the Chief Judicial Magistrate,Madurai.

+1 cc to Mr.J.MATHESH, ADVOCATE, SR NO.12676

SML/mrn

MAS/PM-PN:15.03.2017:2P-4C

Order made in
CRL.O.P. (MD) No.1964 of 2017
06.03.2017