



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2017

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THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.(MD) No.1970 of 2017

V.Thenappan ... Petitioner/Petitioner/Accused

-vs-

A.R.Sakthivel ... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to set aside the order in Cr.M.P.No.3267 of 2016 in S.T.C.No.101 of 2015 dated 09.01.2017 passed by the learned District Munsif-cum-Judicial Magistrate, Natham, Dindigul District by allowing this Criminal Original Petition.

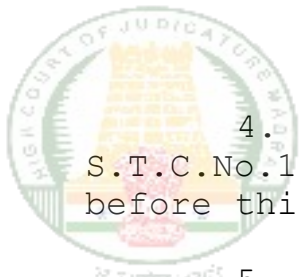
For Petitioners : Mr.R.Aravindraja

O R D E R

This petition has been filed to set aside the order in Cr.M.P.No.3267 of 2016 in S.T.C.No.101 of 2015 dated 09.01.2017 passed by the learned District Munsif-cum-Judicial Magistrate, Natham, Dindigul District by allowing this Criminal Original Petition.

2. Heard the learned counsel for the petitioner.

3. The respondent has launched a prosecution in S.T.C.No.101 of 2015 before the learned District Munsif-cum-Judicial Magistrate, Natham, Dindigul District against this petitioner for offences under Section 138 of Negotiable Instruments Act. The respondent was examined as P.W.1 and he was not cross examined and thereafter, the petitioner/accused filed an application under Section 311 Cr.P.C., which was allowed by the Trial Court. An opportunity was given to the petitioner to cross examine the respondent. The petitioner cross examined the respondent extensively and thereafter, the petitioner filed another petition in Cr.M.P.No.3267 of 2016 in S.T.C.No.101 of 2015 under Section 311 Cr.P.C. to once again recall P.W.1 for further cross examination, on the ground that he had missed out certain points.



4. Learned Trial Court dismissed Cr.M.P.No.3267 of 2016 in S.T.C.No.101 of 2015, challenging which the petitioner/accused is before this Court.

5. Learned counsel for the petitioner submitted that the accused should be given one more opportunity to cross examine the witness in respect of a vital document, which is in the possession of the petitioner. He also placed strong reliance on the judgment of the Hon'ble Supreme Court in the case of Godrej Pacific Tech. Ltd. vs. Computer Joint India Ltd., reported in (2008) 3 MLJ (Cr1) 805 (SC), wherein it has been held as under:

"8. The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the court to summon a witness under the section merely because the evidence supports the case of the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers the Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is "at any stage of any inquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that whereas the section confers a very wide power on the court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind."

6. This Court gave its anxious consideration to the submission made by the learned counsel for the petitioner.

7. It is true that the power under Section 311 Cr.P.C. can be exercised any number of times in the interest of justice. However, the same cannot be used at the mere asking of any party. In the case before the Hon'ble Supreme Court, the facts of the case is narrated in Paragraph No.4 as under:

" 4. In support of the appeal learned counsel for the appellant submitted that the examination in chief of the witness Shri Deepak Jotshi was done on 29.7.2003. On that particular date, the counsel for



the accused had taken an objection that the applicants counsel was asking misleading questions. Hence the trial Court had directed the witness to give his statement and as a layman, he gave his statement. But inadvertently he had not proved the relevant documents i.e. cheques, cheque returning memos, legal notice, courier receipt, letter from complainant bank, whereas, some of the above said documents had already been proved by other witness, other than the complainant."

8. In this case, the petitioner did not cross examine P.W.1 after P.W.1 was examined in chief. The petitioner filed a petition under Section 311 Cr.P.C., which was allowed by the Trial Court and he was permitted to cross examine the respondent. Thereafter, the petitioner has filed the second petition under Section 311 Cr.P.C., wherein he has stated that he has got new material evidence and therefore, P.W.1 should be recalled. He has not even taken the Court into confidence as to what those new materials are? and how relevant they are? to confront P.W.1. The case under Section 138 of N.I.Act is not like a murder case, wherein surprises are permissible. The petition filed by the petitioner before the Trial Court is bereft of even minimum particulars for the Trial Court Judge to exercise his discretionary jurisdiction under Section 311 Cr.P.C.

9. Under such circumstances, this Court does not find any serious infirmity in the order passed by the Trial Court, warranting interference. Hence, this petition is devoid of merits and the same is dismissed with liberty to the petitioner to work out his remedy before the appropriate forum in the manner known to law. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To:

The District Munsif-cum-Judicial Magistrate,
Natham, Dindigul District.

+1 cc to Mr.R.Aravind Raj, Advocate, SR.No.13618

CrI.O.P. (MD) No.1970 of 2017
09.03.2017