



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.03.2017

CORAM

WEB COPY

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

CrI.O.P.(MD) No.2366 of 2017

Vijay
S/o. Murugesan,
3/8A, Aluvilai,
paraicode,
mulagumoodu & post,
Kanyakumari District.

... Petitioner/Accused

-vs-

T.Ida
W/o. A. Selvaraj,
Kovil Vilai,
Paraicode,
Thuckalay Post,
Kanyakumari District.

... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to direct the respondent to call for records in S.T.C.No.681/2015 and set aside the order made in C.M.P.No.556/2017 on the file of the learned Judicial Magistrate, Padmanabhapuram, Kanyakumari District dated 15.02.2017.

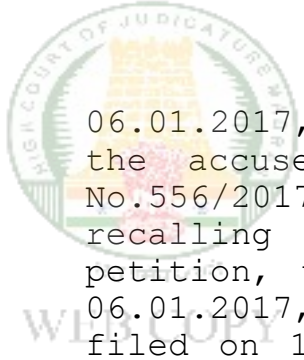
For Petitioner : Mr.R. Russel Raj

O R D E R

This petition has been filed to set aside the order made in C.M.P.No.556/2017 on the file of the learned judicial Magistrate, Padmanabhapuram, Kanyakumari District dated 15.02.2017

2. Heard the learned counsel for the petitioner.

3. The petitioner is facing prosecution in STC No.681/2015 before the Judicial Magistrate, Padmanabhapuram, Kanyakumari District for offences under Sections 138 of the Negotiable Instruments Act. It appears that P.W.1 was examined in chief on



06.01.2017, but he was not cross examined by the learned counsel for the accused. Thereafter, the accused filed a petition in CMP No.556/2017 in STC No.681/2015 under Section 311 Cr.P.C. for recalling P.W.1 for the purpose of cross examination. In that petition, the accused stated that P.W.1 was not cross examined on 06.01.2017, as his counsel was not available. This petition was filed on 15.02.2017. The complainant stated no objection, despite which, the learned Judicial Magistrate, dismissed the same on the ground that the accused is dragging the proceedings.

4. Pursuant to the judgment in **Vinodkumar v. State of Punjab 2015(1) Scale 542**, the Registrar General has issued a circular, to all the Magistrates to strictly follow the mandates of the Supreme Court verdict that absence of counsel in the trial Court cannot be a reason for adjourning the case, as it is clear from 4th Proviso to Section 309(2) Cr.P.C. which reads as follows:

"309(2).....

(c) Where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination in chief or cross examination of the witness, as the case may be."

Therefore, in the considered opinion of this Court, the order passed by the learned Judicial Magistrate, Padmanabhapuram, Kanyakumari District cannot be said to be illegal. However, this Court finds that P.W.1 was examined on 06.01.2017 and this petition for recalling has been filed on 15.02.2017 and that apart the complainant also stated no objection. Under such circumstances, it will serve the interest of justice, if the accused is given one more opportunity to cross examine the witnesses, of course, on terms. The cheque amount appears to be Rs.4 lakhs. The petitioner is directed to deposit a sum of Rs.1 lakh before the Judicial Magistrate, Padmanabhapuram, Kanyakumari District within a period of two weeks from the date of receipt of a copy of this order.

5. On such deposit, the learned Judicial Magistrate is directed to redeposit the said amount in a Nationalised Bank, so that the amount will accrue interest. After the petitioner deposits, the learned Judicial Magistrate may give one more opportunity to the petitioner to cross examine P.W.1 on the date fixed by the learned Judicial Magistrate. On the failure of the petitioner to cross examine the witnesses, even if it is boycott of Courts, he will forfeit this right to cross examine the witness. This Court is not ordering notice to the respondents consciously because, it will only further delay the trial.

<https://hcservices.ecourts.gov.in/hcservices/>

6. With the above observation and directions, this Criminal



Original Petition is disposed of. Final orders with regard to the disposal of the amount with interest shall be decided by the trial court in the final judgment.

WEB COPY

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Padmanabhapuram,
Kanyakumari District
 2. -do- thro' the Chief Judicial Magistrate,
Nagercoil at Kanyakumari.
- + 1 CC TO Mr.R.RUSSEL RAJ, ADVOCATE IN SR No. 13140

RR
TE/SKN-RSK : 23/03/2017 : 3P/4C

CrI.O.P. (MD) No.2366 of 2017
06.03.2017