



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.O.P. (MD)No.7660 of 2017

and

CrI.M.P. (MD)No.5236 of 2017

N.Sureshkumar

: Petitioner

-Vs-

Gomathi

: Respondent

PRAYER: Petition is filed under Section 482 of the Criminal Procedure Code praying to call for the records and set aside the order dated 26.05.2017 passed in C.M.P.No.1846 of 2017 in S.T.C.No.516 of 2015 on the file of the learned Judicial Magistrate, Padmanabapuram, Kanyakumari District.

For Petitioner : Mr.A.Thiruvadi Kumar

O R D E R

For the sake of convenience, the parties will be referred to as complainant and accused.

2. The accused is facing prosecution in S.T.C.No.516 of 2015 before the learned Judicial Magistrate, Padmanabapuram, Kanyakumari District, for an offence under Section 138 of the Negotiable Instruments Act. During trial, the complainant was examined as P.W.1 on 18.03.2017. At the request of the accused, the case was adjourned to 28.03.2017 for cross of P.W.1. The accused did not choose to cross-examine P.W.1. Therefore, the Court closed the evidence of P.W.1 as no cross and posted the case to 19.04.2017 for examination of the accused under Section 313 of the Code of Criminal Procedure. The accused was examined under Section 313 of the Code of Criminal Procedure on 19.04.2017 and the case was posted to 26.04.2017 for defence witness. After several adjournments, the accused filed a petition in C.M.P.No.1846 of 2017 in S.T.C.No.516 of 2015 under Section 311 of the Code of Criminal Procedure for recalling P.W.1, which has been dismissed by the Trial Court on 26.05.2017, challenging which, the accused is before this Court.

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

3. If notice is ordered to the complainant in this petition, it will only further prolong the disposal of the case by the Trial



Court. Therefore, in view of the order that is being passed by this Court, it may not be necessary to order notice to the complainant.

4. From the impugned order, it is seen that the learned Trial Judge has given enough opportunities for the accused to cross-examine P.W.1 and, therefore, the order passed by the learned Trial Judge cannot be said to be completely wrong. However, it is seen that P.W.1 was examined in chief only on 18.03.2017. That apart, if no opportunity is given to the accused to cross-examine P.W.1, it may lead to travesty of justice. Hence, this Court directs the accused to deposit Rs.25,000/- (Rupees Twenty Five Thousand only) to the credit of S.T.C.No.516 of 2015, within two weeks from the date of receipt of a copy of this order and on such deposit, the learned Judicial Magistrate, Padmanabhapuram, shall re-deposit it in a fixed deposit account. Thereafter, the learned Judicial Magistrate shall recall P.W.1 for cross-examination. P.W.1 will be entitled to refresh her memory by reading the deposition in chief. P.W.1 shall be paid a cost of Rs.1,000/- (Rupees One Thousand only) on the day she appears for cross-examination. In the event of the Trial Court convicting the accused, the sum of Rs.25,000/- (Rupees Twenty Five Thousand only) shall be immediately disbursed to the complainant with accrued interest without waiting for orders from the Appellate Court. The Trial Court shall decide the merits of the case independently.

5. This Criminal Original Petition is disposed of with the above direction. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

The Judicial Magistrate,
Padmanabapuram,
Kanyakumari District.

+ 1 CC TO Mr.A.THIRUVADIKUMAR, ADVOCATE IN SR No. 61564

SML

TE/KP/SAR-I : 06/07/2017 : 2P/3C

Order made in
CRL.O.P.(MD) No.7660 of 2017 and
Crl.M.P.(MD)No.5236 of 2017
21.06.2017