

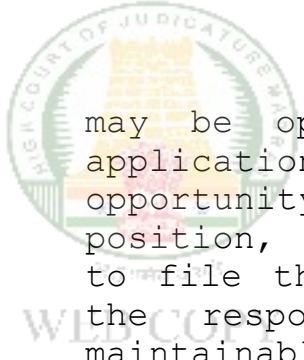
not utilise the opportunity. Ultimately, the respondent cross-examined both the witnesses on 18.05.2016. Thereafter, the respondent filed another application under Section 311 of the Criminal Procedure Code, stating that he received the bank statement and that the cross-examination of P.W.1 and P.W.2 is absolutely necessary to prove his case in defence. The application in Crl.M.P.(MD)No.3358 of 2016 in C.C.No.151 of 2013 was partly allowed insofar as P.W.2 is concerned. However, the application was dismissed in respect of PW.1. The said Order of the lower Court was challenged by filing a revision petition. The said revision was also dismissed as not pressed. However, citing the said reason, subsequent application was filed by the respondent in Crl.M.P.(MD)No.2134 of 2017. In the application filed under Section 311 of the Code of Criminal Procedure, the petitioner has stated as follows:-

"It is respectfully submitted that the Complainant Paramasivam has been cross examined on 18.05.2016. The Petitioner/Accused had applied for his statement of account from Tamil Nadu Mercantile Bank in Account Number 156100050003561 and as transaction related period from 2003 to 2006, the said account has been sent by concern Tamil Nadu Mercantile Bank, Sipcot Branch to Reserve Bank of India. The petitioner was able to get that account statement only on 17.06.2016. Further P.W.2 who was recalled for cross examination has subsequently died.

.....

It is respectfully submitted that the complainant has further cross examined with regard to transaction regarding from 2003 to 2004 as found in account statement. Further important suggestion and question have been omitted in the yearly cross examination. The petitioner/accused undertakes to finish the cross examination on a day fixed by Hon'ble Court and complete the defence argument on the same day. No prejudice will be caused to the Complainant who has to present for every hearing."

5. It is to be noted that the earlier application was filed by the petitioner was on 23.08.2016. Therefore, this Court can infer that on the date, when the earlier application was filed on 23.08.2016, the respondent had the documents in his possession which were stated to be the reason for filing second application. Having passed an order dismissing the earlier petition to recall P.W.1 and allowing the petition with regard to P.W.2, along the order passed by the lower Court re-writing or reviewing the earlier order by the impugned order is not legal. Unfortunately, <https://hdservices.courts.gov.in/hdservices/> has allowed that Crl.M.P.(MD)No.2134 of 2017 only on the ground of change of circumstances ignoring the order passed by the learned Single Judge earlier on the same set of facts. It



may be open to the lower Court to consider the successive applications, due to change of circumstances, to give further opportunity to the accused. In this case, having regard to factual position, there is no subsequent event or change of circumstances to file the second application. The second application filed by the respondent to recall and cross-examine P.W.1 is not maintainable.

6. In that view of the matter, the Criminal Original Petition is **allowed** and the order passed by the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi, in CrI.M.P.(MD)No.2134 of 2017, dated 21.04.2017 is set aside. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate,
Fast Track Court (Magisterial Level),
Thoothukudi.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.T.Antony Arul Raj, Advocate Sr.No.79150

MRN/PJL

VB/SKN/RSK/SAR1/11/10/2017/3P/4C

CrI.O.P. (MD) No.8461 of 2017
and
CrI.M.P. (MD) No.5720 of 2017
15.09.2017