



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 06.02.2017

CORAM

THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

Cr1.O.P. (MD) No.23538 of 2016
and
Cr1.M.P. (MD) No.12429 of 2016

M.Victor Durairaj : Petitioner/Accused

-vs-

M.P.Degal : Respondent/ Respondent/Complainant

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records and set aside the order, dated 07.11.2016 passed in C.M.P.No.5663 of 2016 in C.C.No.64 of 2013 on the file of the learned Judicial Magistrate/Fast Track Court (Magistrate Level) No1., Nagercoil, Kanyakumari District.

For Petitioners : Mr.A.Thiruvadikumar

For Respondent : Mr.S.Palanivelayutham

O R D E R

This petition has been filed to call for the records and set aside the order, dated 07.11.2016 passed in C.M.P.No.5663 of 2016 in C.C.No.64 of 2013 on the file of the learned Judicial Magistrate/Fast Track Court (Magisterial Level) No.1, Nagercoil, Kanyakumari District.

2.The learned counsel for the petitioner has submitted that the the petitioner is the accused in C.C.No.64 of 2013 on the file of the Judicial Magistrate/Fast Track Court (Magisterial Level) No.1, Nagercoil, Kanyakumari District and that PW1 was not properly cross examined by the counsel appearing for the petitioner before the trial court to the effect relating to the case in C.C.No.308 of 2012 and that the petitioner is a Master Decree Holder and that the trial court, without considering the above fact has dismissed the application filed by the petitioner and not allowed for cross examination of PW1. Hence, the revision filed by the petitioner has to be allowed.

3.The learned counsel appearing for the respondent has submitted that the reasons stated by the petitioner to recall PW1 is



not a valid ground and cannot be accepted and that the trial court after considering the facts of the case, has rightly dismissed the petition filed by the petitioner. Hence, the revision filed by the petitioner has to be dismissed.

4. Heard both sides and perused the materials available on record.

5. It is seen from the records that after examination of the complainant as PW1, the petitioner has filed an application before the trial court to recall PW1 for the purpose of cross examination and he has also stated in the petition that his counsel has not cross examined the witness PW1 properly. The above reason stated by the petitioner in the recall petition cannot be accepted. However, in this case, admittedly, the complaint was filed under Section 138 of the Negotiable Instruments Act for the dishonour of the cheque for Rs.9,00,000/-. In view of the above circumstances, in the interest of justice, one more opportunity has to be given to the petitioner with some conditions.

6. In the result, this petition is allowed on condition that the petitioner shall deposit a sum of Rs.5,00,000/- before the trial court on or before 14.02.2017, failing which the petition shall stand dismissed automatically without further reference to this court. If the amount is deposited within the time stipulated by this court, the trial court is directed to recall PW1 for the purpose of cross examination on the side of the accused. Further, the trial court is directed to post the case on day today basis and dispose of the same within a period of three weeks from the date of closure of the evidence of PW1 and report the same to the Registry. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Records)

/True Copy/

Sub-Assistant Registrar

To

The Judicial Magistrate/

Fast Track Court (Magisterial Level) No.1,

Nagercoil, Kanyakumari District

+One cc to Mr.S.Palanivelayutham, Advocate, SR.No.6514

+One cc to Mr.A.Thiruvadikumar, Advocate, SR.No.6460

er

RL/4C/2P/MR/15.2.2017

Cr1.O.P.(MD) No.23538 of 2016

06.02.2017