

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2018

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.O.P.Nos.20156 & 20157 of 2018
and
CrI.M.P.No.10749 of 2018

Jayaraman ... Petitioner in both petitions

Vs.

Pandian ... Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. praying to set aside the order dated 07.07.2018 made in C.M.P.Nos.3696 & 3697 of 2018 respectively in S.T.C.No.1722 of 2014 on the file of the Learned Judicial Magistrate No.I, Mannargudi.

For Petitioner : Mr.M.Guruprasad

COMMON ORDER

The petitioner is facing a prosecution in S.T.C.No.1722 of 2014 before the Judicial Magistrate No.1, Mannarkudi, for the offence under Section 138 of Negotiable Instruments Act, 1881. During trial, the petitioner filed C.M.P. Nos.3696 of 2018 and 3697 of 2018 under Section 91 Cr.P.C. and 311 Cr.P.C. respectively for direction to the complainant to produce Income Tax details and also for recalling the complainant for further cross-examination. Both the petitions have been dismissed by the trial Court on 07.07.2018, challenging which, the accused is before this Court.

2.Heard the learned counsel for the accused who submitted that one opportunity may be given to the accused to recall P.W.1 for the purpose of cross-examination.

3. This Court gave its anxious consideration to the submission of the learned counsel for the accused.

4. It is seen that the complainant was examined as PW1 on 22.09.2016. On that date, the accused did not cross-examine the witness. PW1 was called on 28.02.2018, one and a half years later and he was cross-examined by the accused. Thereafter, several opportunities were given to the accused, which he had not availed. On 19.04.2018, the accused examined himself as

DW1. Thereafter, the evidence of the accused was closed and the matter was posted for arguments on 24.05.2018 and 28.05.2018. While so, the accused has filed these two petitions with the aforesaid prayers.

5.As per the judgment of the Supreme Court in State of Orissa vs. Debendra Nath Padhi, (2004 AIR SCW 6813), Section 91 Cr.P.C., can be invoked only when the document that is called for, is necessary and desirable in the context of the purpose for which it is required and no roving or fishing enquiry can be permitted with the aid of Section 91 Cr.P.C. That apart, in A.G. Vs. Shiv Kumar Yadav and another, [(2015) 9 Scale 649], the Supreme Court has clearly set out the parameters for re-calling and cross-examination of the prosecution witnesses.

6. In this case, the petitioner was given sufficient opportunity to cross-examine P.W.1 and he has also cross-examined PW1. This is not a case where the accused has not cross-examined PW1 at all.

7. In such view of the matter, this Court does not find any infirmity in the order passed by the trial Court warranting interference. Hence, these petitions are dismissed, as being devoid of merits. Consequently, connected MP is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

The Judicial Magistrate No.I,
Mannargudi.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.56933

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CrI.O.P.Nos.20156 & 20157 of 2018
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SVN(co)

rrs 06.05.2018