

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2018

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.22729 of 2017

and Crl.M.P.No.13274 of 2017

E.Perumal

.. Petitioner

Vs

Shanmugam

...Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order dated 14.09.2017 passed by the learned Metropolitan Magistrate Fast Track Court-I, Egmore, Allikulam, Chennai in Crl.M.P.No.1958 of 2017 in C.C.No.7213 of 2014.

For Petitioner : Mr.P.Rajkumar Pandian
For Respondent : Mr.C.Nithysh Sekar

O R D E R

This petition has been filed to set aside the order dated 14.09.2017 passed by the learned Metropolitan Magistrate Fast Track Court-I, Egmore, Allikulam, Chennai in Crl.M.P.No.1958 of 2017 in C.C.No.7213 of 2014.

2. For the sake of convenience, the petitioner and the respondent will be referred to as the accused and the complainant respectively.

3. The accused is facing prosecution in C.C.No.7213 of 2014 before the Fast Track Court No.I, Egmore at Allikulam, for an offence under Section 138 of the Negotiable Instruments Act. During the course of arguments, the complainant filed Crl.M.P.No.1958 of 2017 in C.C.No.7213 of 2014 under Section 311 Cr.P.C., to reopen and recall P.W.1, for the purpose of marking the Income Tax Returns and lease agreement entered into between the complainant and one Nawaz Kani, to show that the complainant had sufficient capacity to advance loan to the accused. The said petition has been allowed by the trial Court by the impugned order dated 14.09.2017, challenging which, the accused is before this Court.

4. The learned counsel for the accused submitted that the complainant cannot be allowed to fill in the lacuna at a belated stage. It is true that in Rajendra Prasad Vs Narcotic Cell [(1999) 6 SCC 110], the Supreme Court has held that if a particular evidence is relevant, the power under Section 311 Cr.P.C. should be invoked and the plea that the prosecution is trying to fill in the lacuna should not deter the trial Court from invoking the power.

5. In this case, just because P.W.1 is recalled and Income Tax Returns are marked, the case will not end. The accused will have an opportunity to cross-examine P.W.1 and a further opportunity should be given to the accused under Section 313 Cr.P.C. to explain the circumstances appearing against him, after P.W.1 has been recalled and examined. Under such circumstances, no prejudice will be caused to the accused, if P.W.1 is recalled.

Accordingly, this petition is closed with liberty to the accused to cross-examine P.W.1 after he is examined-in-chief and also give his explanation under Section 313 Cr.P.C. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

gms

To

1.The Metropolitan Magistrate Fast Track Court-I,
Egmore, Allikulam, Chennai.

2.Do-Through Chief Metropolitan Magistrate,
Egmore, Allikulam, Chennai.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.C.Nithysh Sekar, Advocate, S.R.No 44196

Cr1.O.P.No.22729 of 2017

BM 10/07/2018