

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.04.2018

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP No.11180 of 2018
and
Crl.M.P.No.5758 of 2018

M/s.Crystal Entertainment
Rep.by its Proprietor,
Mr.G.Vengatupathy
S/o.Guruswamy
No.30, Thilagar Street,
Eerpallayam,
Udumalaipet,
Thiruppur District. Petitioner/Accused

Vs

R.Pranesh Respondent/Complainant

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the order made in Crl.M.P.No.449 of 2018 dated 13.03.2018 in C.C.No.1671 of 2012 (on the file of the Metropolitan Magistrate, Fast Track Court-IV) George Town, Chennai-1 by allowing this Criminal Original Petition.

For Petitioner :Mr.S.Sivakumar

ORDER

This Criminal Original Petition has been filed to set aside the order made in Crl.M.P.No.449 of 2018 dated 13.03.2018 in C.C.No.1671 of 2012 on the file of the Metropolitan Magistrate, Fast Track Court-IV, George Town, Chennai.

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

3. The complainant has initiated a prosecution in C.C.No.1671 of 2012 and the same is pending on the file of the Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai. From 2012 to 2016, the accused was prolonging the trial for some reason or other. Ultimately, the complainant filed the proof affidavit on 03.10.2016. After 03.10.2016, the accused cross examined the complainant in part on 17.02.2017 and took adjournments. Thereafter, the case was adjourned to 27.02.2017, 14.03.2017, 27.03.2017, 12.04.2017,

20.04.2017 and 03.05.2017. On all these dates, the accused did not cross examine the complainant. However, the accused filed an application under Section 91 Cr.P.C. for a direction to the complainant to produce certain documents. The said petition was dismissed on 24.08.2017. On 01.09.2017, when the case was posted, the accused did not cross examine the complainant and therefore, the case was adjourned to 09.10.2017. On 09.10.2017, the accused did not appear and therefore, a Non Bailable Warrant was issued against him. Only on 09.11.2017, the Non Bailable Warrant was recalled. Thereafter, the case was adjourned for cross examination of P.W.1 on 21.11.2017 on payment of costs of Rs.500/- After payment of costs of Rs.500/-, when the complainant appeared for cross examination, the accused did not cross examine the complainant. Since the evidence of complainant was closed, the accused filed the petition in CrI.M.P.No.449 of 2018 in C.C.No.1671 of 2012 under Section 311 Cr.P.C. to reopen and recall PW1 for the purpose of cross examination. The trial Court has dismissed the said petition on 13.03.2018, aggrieved by which, the accused is before this Court.

4. Heard Mr.S.Sivakumar, learned counsel appearing for the accused, who submitted that the accused is ready and willing to cross examine P.W.1, if one more opportunity is given.

5. This Court has not issued notice to the respondent/complainant because that will further delay the proceedings.

6. From the order passed by the trial Court, it is seen that the accused has adopted dilatory tactics by not cross examining the witness from 2016 onwards. The case has been pending since 2012 and the trial Court has given sufficient opportunity to the accused to cross examine P.W.1, despite which, he has not cross-examined P.W.1. Therefore, this Court does not find any infirmity in the order passed by the trial Court, especially in view of the law laid down in Vinod Kumar vs. State of Punjab, [2015 (1) MLJ (CrI.) 288] wherein it has been held by the Supreme Court that the accused cross examine the prosecution witnesses on the date they are examined in chief.

7. However, Mr.S.Sivakumar, learned counsel for the accused submitted that undue prejudice will be caused to the accused if the complainant is not cross-examined.

8. This Court is of the view that, interests of justice, would be subserved, if one more opportunity is given to the accused to cross examine P.W.1 on the following terms:

a) The accused shall deposit a sum of Rs.50,000/- (Rupees Fifty Thousand only) towards the impugned cheque within a period of two weeks from the date of receipt of a copy of this order to the credit of C.C.No.1671 of 2012 before the learned

Metropolitan Magistrate, Fast Track Court-IV, George Town, Chennai.

b) On such deposit, the learned Metropolitan Magistrate shall re-deposit the amount in a fixed deposit in any one of the nationalised banks so that the amount accrues interest and the same can be disbursed depending upon the outcome of trial proceedings.

c) The accused shall pay a sum of Rs.3,000/- (Rupees Three Thousand only) as costs to the complainant;

d) On the date fixed by the trial Court, the accused shall cross-examine the complainant after payment of costs of Rs.3,000/-.

9. If the accused fails to comply with any of the conditions set out above, he will forfeit his right to cross-examine the witness and the trial Court can proceed further in the case.

With the above directions, this Criminal Original petition is disposed of. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

cla/lok
To

1. The Metropolitan Magistrate,
Fast Track Court-IV,
George Town, Chennai-1.
2. Through The Chief Metropolitan Magistrate,
Chennai.

+ 1 cc to Mr. S. Sivakumar, Advocate Sr.26602

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KK(CO)
EU(26/04/2018)
<https://hcservices.ecourts.gov.in/hcservices/>