

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2018

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.11448 of 2018

and

Crl.M.P.No.5950 of 2018

P.Babu

...

Petitioner

Vs

A.Ramzan Ali

... Respondent

Prayer:- Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to set aside the order passed by the Metropolitan Magistrate, Fast Track Court - IV, George Town, Chennai, in Crl.M.P.No.4150 of 2017 dated 11.08.2017 in C.C.No.1666 of 2016 and which has been confirmed in Crl.R.C.No.21 of 2017 vide order dated 11.12.2017 by the Principal Sessions Judge, Chennai.

For Petitioner :Mr.S.Santhanam

ORDER

The petitioner is facing prosecution in C.C.No.1666 of 2016 before the learned Metropolitan Magistrate, Fast Track Court - IV, George Town, Chennai, under Section 138 of the Negotiable Instruments Act.

2.While the case was on trial before the regular Magistrate, PW1 was examined in Chief and he was not cross examined by the petitioner/accused. Hence, the petitioner filed an application under Section 311 of Cr.P.C. for recalling PW1, which is allowed by the Court in the year 2012. From 2012 onwards, the petitioner did not choose to cross examine PW1. After formation of new Courts in George Town, the case was transferred from Egmore Court to George Town Court and renumbered as Crl.M.P.No.4150 of 2017. After the case was transferred to George Town Court, the Magistrate has given enough opportunity to the accused to cross examine PW1. In spite of which, the accused did not cross examine PW1. Hence, the evidence of PW1 was closed. Thereafter, the accused filed Crl.M.P.No.4150 of 2017 in C.C.No.1666 of 2016 for recalling PW1, which has been dismissed by the trial Court, by a well considered order dated 11.08.2017. Challenging which, the petitioner has filed a revision before the Sessions Court in Crl.R.C.No.21 of 2017,

which has been dismissed by the Sessions Court, as not maintainable. Hence, the petitioner is before this Court.

3.Heard Mr.S.Santhanam, learned counsel appearing for the petitioner, who would submit that undue prejudice will be caused to the petitioner, if the petitioner is not permitted to cross examine PW1.

4.In A.G. v. Shiv Kumar Yadav and another reported in [(2015) 9 Scale 649], the Hon'ble Supreme Court has clearly stated that the power under Section 311 of Cr.P.C. cannot be invoked at the mere asking of the party.

5.In this case, the accused did not cross examine PW1, after Chief examination was taken on file for the formation of proof affidavit. When the matter is pending before the learned Metropolitan Magistrate, Egmore, Chennai, the petitioner filed a petition under Section 311 of Cr.P.C. which has been allowed by the learned Magistrate. After the case was transferred to George Town Court, enough opportunity has been given to the accused to cross examine PW1, but he did not avail.

In such view of the matter, opportunity after opportunity cannot be given to the petitioner. Hence, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mps

To

1.The Principal Sessions Judge,
Chennai.

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

Cr1.O.P.No.11448 of 2018

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