

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2018

C O R A M

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.No.11905 of 2018
and Crl.M.P.No.6284 of 2018

K.Venkatesan

...Petitioner

Vs.

M/s.Age International,
A sole Proprietary Concern
Rep.by Danial Wilson,
No.468/23, "Harmony Apartments,
AG Block, 2nd Street, 7th Main Road,
Anna Nagar, Chennai 600 040

... Respondent

Criminal Original Petition is filed under Section 482 of Cr.P.C to set aside the order dated 28.12.2017 passed in C.M.P.No.4155 of 2017 in C.C.No.5282 of 2016 on the file of Hon'ble Metropolitan Magistrate, Fast Track Court-II, Egmore, Allikulam, Chennai 600 003.

For Petitioner : Mr.M.K.Bhoopathy

For Respondent : Mrs.P.Kritika Kamal,
Government Advocate (Crl.Side)

O R D E R

This criminal original petition has been filed to set aside the order dated 28.12.2017 passed in C.M.P.No.4155 of 2017 in C.C.No.5282 of 2016 on the file of the Metropolitan Magistrate, Fast Track Court-II, Egmore, Allikulam, Chennai.

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

3. The complainant has initiated a prosecution against the accused in C.C.No.5282 of 2016 under Section 138 of the Negotiable Instruments Act, 1881 before the Fast Track Court No.II, Egmore, Chennai. The complainant was examined in chief as PW1 and he was not cross-examined by the

accused. The accused filed a petition under Section 311 Cr.P.C and the same was allowed by the trial Court in spite of which, the accused did not cross-examine the complainant. Therefore, the cross examination of the complainant was closed by the trial Court. Once again, the accused filed a petition in CMP.No.4155 of 2017 in C.C.No.5282 of 2016 under Section 311 Cr.P.C. for recalling the complainant for the purpose of cross-examination which has been dismissed by the trial Court on 28.12.2017, challenging which, the accused has filed the present petition.

4. Heard the learned counsel for the accused who submitted that an opportunity should be given to the accused to cross-examine the complainant.

5. This Court is of the view that the accused was given an opportunity to cross-examine the complainant after the complainant was examined in chief. The accused did not avail of the opportunity. The accused filed a petition under Section 311 Cr.P.C. which was allowed by the Court in spite of which, the accused did not choose to cross-examine the complainant. Hence, opportunities after opportunities cannot be given to the accused to cross-examine the complainant. In fact, in *Vinothkumar Vs. State of Punjab* [CDJ 2015 SC 115] :: [2015 (3) SCC 220], the Supreme Court has clearly stated that the witness should be cross-examined on the day he is examined in chief. In *A.G. Vs. Shiv Kumar Yadav and another*, [(2015) 9 Scale 649], the Supreme Court has held that a petition under Section 311 Cr.P.C. cannot be allowed mechanically.

6. In view of the aforesaid judgments which are binding on this Court, this Court does not find infirmity in the order passed by the trial Court.

Thus, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

सत्यमेव जयते Assistant Registrar (CS III)

//True copy//

Sub Assistant Registrar

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To

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

2. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.M.K.Bhoopathy, Advocate SR.No.30568

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and Crl.M.P.No.6284 of 2018

SG(CO)
GN(08/05/2018)



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