

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.27552 of 2017
and Crl.M.P. No. 15731 of 2017

K.Kumar

.. Petitioner

Vs.

The State rep. by
The Inspector of Police,
Mangalam Police Station,
Tiruppur-District.
(Crime No.661/2015)

..Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to set aside the order dated 10.08.2017 made in C.M.P.No.1345 of 2017 in C.C.No.58 of 2017 on the file of the learned Judicial Magistrate-IV, Tiruppur.

For Petitioner : M/s.Deepan Uday
For Respondent : Mrs.P.Kritika Kamal
Government Advocate (Crl. Side)

O R D E R

The Petitioner's request to recall and cross examination of PW1, PW2, PW3, PW5, PW6 under Section 311 of Code of Criminal Procedure was rejected on the ground that the petitioner has not stated any reasons for further cross examination of PW1, PW2, PW3, PW5, PW6 and did not exercise the option of cross examination when the PW1, PW2, PW3, PW5, PW6 was present. Challenging the same, the present petition is filed.

2. It is true that the Hon'ble Supreme Court in various cases condemned the practices of vexatious applications filed under Section 311 of Cr.P.C to protract the proceedings.

3. Nevertheless, the learned counsel for the petitioner submitted that the petitioner may be given an opportunity for cross examining the prosecution witness PW1, PW2, PW3, PW5, PW6 to prove that the allegation of the respondent in the complaint is false.

4. In view of the submissions made by the petitioner, by giving another opportunity to cross examine the prosecution witness PW1, PW2, PW3, PW5, PW6, by fixing the time frame for completing the cross examination will not cause prejudice to the

prosecution and by fixing such time frame, the proceedings may not get unjustifiably prolonged.

5. In the instant case the petitioner's application under Section 311 came to be allowed with cost on condition that the petitioner shall pay a sum of Rs.500/- for the cross-examination of PW1 to PW5. He had paid the cost on 09.08.2017 itself and that he was unable to produce the receipt before the Judicial Magistrate-IV, Tiruppur and hence the petition came to be dismissed on 10.08.2017 on the ground that the cost was not paid.

6. The learned counsel for the petitioner submitted that the petitioner was unable to produce the receipt before the Judicial Magistrate-IV, Tiruppur. Sympathetic view can be taken on the ground that the petitioner is unable to cross-examine of 6 witnesses and at the same time, it would be appropriate direct the petitioner to produce the receipt on same day on which the cross-examination is done.

7. In the result the Criminal Original Petition stands allowed. The proceedings order dated 10.08.2017 made in CrI.M.P.1345 of 2017 in C.C.No.58 of 2017 on the file of the Judicial Magistrate-IV, Tiruppur is set aside, consequently the petitioner is granted liberty to cross-examine PW1, PW2, PW3, PW5, PW6 on 22.01.2018 and 23.01.2018. It is made clear that the petitioner shall endeavour to complete the cross-examination on the afore said two days and no further time would be granted. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

nmm

To

1. The Judicial Magistrate-IV, Tiruppur.
2. The Inspector of Police,
Mangalam Police Station,
Tiruppur-District.
3. The Public Prosecutor, Madras High Court.

+1cc to M/s.Deepan Uday, Advocate in sr.1790

CRL.O.P.No.27552 of 2017

CS/12/01/18