

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.10.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.3326 of 2017  
and Crl.M.P.No.2419 of 2017

R.Easwaramoorthy

.. Petitioner

-Vs-

M.Sivakumar

.. Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records relating to the order dated 04.11.2016 passed in C.M.P.No.5337/2016 in C.C.No.268/2008 on the file of the Judicial Magistrate Court, Avinashi, set aside the same.

For Petitioner : Mr.M.Baskar

O R D E R

The petitioner is facing the prosecution in C.C.No.268 of 2008 before the Judicial Magistrate Court, Avinashi for the offences under Section 138 of the Negotiable Instruments Act. Trial began with the examination of the complainant as P.W.1. The proof affidavit of the complainant was filed on 15.10.2010 and he was cross-examined by the accused on 15.10.2010.

2.The accused filed C.M.P.No.1718 of 2012 under Section 311 Cr.P.C to recall P.W.1, which was allowed by the Trial Court. Thereafter, P.W.1 was cross-examined on 01.02.2013 and then there was continued cross of P.W.1 on 23.05.2014.

3.In the year 2016, the accused filed a fresh petition in C.M.P.No.5337 of 2016 under Section 311 Cr.P.C to recall P.W.1 for further cross-examination, which has been dismissed by the Trial Court by the impugned order dated 04.11.2016, challenging which the accused is before this Court in the year 2018.

4.On the short ground of latches itself, this petition ought to be dismissed. However, on merits also, this Court finds that the accused had extensively cross-examined the complainant on three dates as stated above, as if it is a death sentence case. In A.G. Vs Shiv Kumar Yadav 2015[9] Scale 649, the Hon'ble Supreme Court has laid down the parameters for exercise

of power under Section 311 Cr.P.C. In this case, the accused has merely stated that he wants to mark some important documents regarding the bank transactions through the complainant and therefore the complainant should be recalled for further cross-examination. On this flimsy ground, a witness cannot be recalled for further cross-examination.

Hence, this petition is dismissed as devoid of merits. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

kkn/gsa

To

1.The Judicial Magistrate,  
Avinashi.

2.The Public Prosecutor,  
High Court, Madras.

+1cc to Mr.M.Bhaskar, Advocate, S.R.No.75219

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RGN(CO)  
GN(19/11/2018)

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