

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.09.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.23076 of 2018
and CRL.M.P.No.12870 of 2018
AND

CRL.O.P.No.23103 of 2018
and CRL.M.P.No.12874 of 2018

1.M/s Sangeetha Pharma,
(Pharmaceutical Distributors)
Represented by its partner B.Santhosh,
No.111, Rangai Gounder Street,
Near kalyana Mandabam,
Coimbatore-District.

2.S.Sangeetha
W/o C.B.Shanmugam,
Partner of M/s Sangeetha Pharma,
No.111, Rangai Gounder Street,
Near Devanga Kalyana Mandabam,
Coimbatore-District.

3.B.Santhosh
S/o M.Balakrishnan,
Partner of M/s Sangeetha pharma,
No.111, Rangai Gounder street,
Near Devanga Kalyana Mandabam,
Coimbatore-District.

.. Petitioners in both
petitions

Vs

S.Senthil Selvam
S/o N.Shangaralingam,
Proprietor M/s Sivakami Pharma
D.No.164, Lingappachetty Street
2nd Floor, SKM Complex,
Coimbatore-District.

.. Respondent in both petitions

Criminal Original Petitions filed under Section 482 Cr.P.C.,
praying to set aside the order dated 18.05.2018 made in
C.M.P.No.2739 of 2018 in C.C.No.26 of 2017 and C.M.P.No.2740 of
2018 in C.C.No.26 of 2017 respectively on the file of the
Judicial Magistrate, Fast Track Court-II, Coimbatore.

For Petitioners: Mr.Karthik Raja
for Mr.Deepan Uday
in both petitions

For Respondent : Mrs.M.Prabhavathi, APP
in both petitions

C O M M O N O R D E R

For the sake of convenience, the parties will be referred to as complainant and accused.

2.The complainant has initiated a prosecution in C.C.No.26 of 2017 under Section 138 of the Negotiable Instruments Act and the same is now pending on the file of the Fast Track Court No-II, Coimbatore. The accused filed C.M.P.Nos.2739 of 2018 and 2740 of 2018 in C.C.No.26 of 2017 for re-opening and re-calling PW1, which has been dismissed by the trial Court by the order dated 18.05.2018. Challenging which, the accused is before this Court.

3.Heard Mr.Karthick Raja, learned counsel appearing for the accused, who submitted that the accused may be given one opportunity to complete the cross-examination of PW1.

4.On a perusal of the trial Court records, it is seen that the complainant was examined in-chief on 05.07.2017. The accused did not choose to cross-examine the complainant either on 05.07.2017 or subsequently. The accused filed a petition under Section 311 Cr.P.C. to recall PW1, which was allowed by the trial Court on 23.10.2017. The accused cross-examined the complainant on 10.11.2017 in-part and thereafter, the accused did not choose to cross-examine the complainant, though the complainant was available on 14.12.2017, 09.01.2018 and 06.02.2018. Only in these circumstances, the trial Court closed the evidence and proceeded to hear the arguments.

5.Though, this Court does not find any infirmity in the order passed by the trial Court, yet this Court is of the view that an opportunity may be given to accused to cross-examine PW1, on condition the he should deposit 50% of the cheque amount, namely, Rs.50,000/- to the credit of C.C.No.26 of 2017 before the Trial Court within two weeks from the date of receipt of a copy of this order. On such deposit, the trial Court may fix a date for cross-examination of PW1. If the petitioner/accused fails to deposit the amount of Rs.50,000/- as stated above, he would forfeit his right to further cross-examine the complainant. There shall not be any extension of

time, since the accused was given several opportunities to further cross-examine the complainant, which he failed to avail. The sum of Rs.50,000/- shall be disbursed to the complainant as compensation, in the event of the accused being convicted by the trial Court. In the event of the accused being acquitted by the trial Court, the sum of Rs.50,000 shall be paid to the accused. It is not necessary for the trial Court, to wait for the parties to approach the appellate Court for disbursal of the amount as stated above.

With the above direction, these petitions are ordered accordingly. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gya

To

1.Judicial Magistrate Court,
Fast Track Court-II,
Coimbatore.

2.The Public Prosecutor,
High Court, Madras.

+2cc to Mr.Deepan, Advocate Sr.67911

सत्यमेव जयते

CRL.O.P.Nos.23076 & 23103 of 2018

pa[co]
srg 30/10/2018

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