

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 19.12.2018
CORAM:
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH
Crl.O.P.No.26814 of 2018
and
Crl.M.P.No.15464 of 2018

S.Nallathambi @ Shankar ...Petitioner/ Petitioner/Accused

Vs.

S.Asir Raj ...Respondent/Respondent /Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Cr.P.C., to Set Aside the Order dated 08.11.2018 passed in C.M.P. No.1761 of 2018 in S.T.C. No.195 of 2018, on the file of Land Grabbing Judicial Magistrate Court, Salem and to allow the Criminal Original Petition.

For Petitioner :Mr.C.Prabakaran
For Respondents :M/s.D.Shivakumaran,
for S.Mayilnathan

O R D E R

This petition has been filed challenging the order passed by the Court below dismissing application filed under section 311 of Cr.P.C. filed by the petitioner for re-opening the accused side evidence which was closed on 04.10.2018.

2. The petitioner is an accused facing trial before the Court below for an offence under section 138 of the Negotiable Instrument Act. The evidence on the side of the complainant was completed and the case was at the stage of examining defence witnesses. Since the petitioner did not examine any witness on the side of the defence, the evidence was closed on 04.10.2018 and the matter was posted for arguments on 09.10.2018. At this stage, the petitioner filed a petition for re-opening and to examine the witness on the side of the defence.

3. The Court below had dismissed this petition on the ground that sufficient opportunity was given to the petitioner and he did not use the opportunity and the petition itself has been filed only to drag on the proceedings.

4. The learned counsel for petitioner would submit that one last chance can be given to the petitioner to examine the witnesses on the side of the

defence. The learned counsel for the petitioner would further submit that the petitioner will not drag on the proceedings and the witnesses will be examined and closed within a short time.

5. The learned counsel for the respondent would submit that the petitioner inspite of being given sufficient opportunity did not examine any witnesses on the side of the defence. The learned counsel for the respondent would further submit that some time limit may be fixed by this Court for completion of the proceedings.

6. This Court has carefully considered the submissions made on either side.

7. It is seen from the records that the trial commenced in this case from may 2018 and the evidence on the side of the complainant was closed. Thereafter, three opportunities were given to the petitioner to examine witnesses on the side of the defence. However, the petitioner did not examine any witnesses. Therefore the Court below closed the evidence on 04.10.2018.

8. This Court is of the considered view that one last opportunity can be given to the petitioner to examine witnesses on the side of the defence.

9. The order passed by the Court below in Criminal MP No.1761 of 2018 dated 08.11.2018 is hereby set aside. The petitioner shall be permitted to re-open and examine witnesses on his side. The Court below shall complete the entire proceedings within a period of two months from the date of receipt of copy of this order. This Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

pds/rka

To

1.The Judicial Magistrate Court, (Land Grabbing)
Salem.

2.The Public Prosecutor,
High Court of Madras, Chennai.

+1cc to Mr.M/s.D.Shivakumaran , Advocate SR.No. 88730
Crl.O.P.No.26814 of 2018

ASK(09/01/2019)