

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.Nos.27593 & 27597 of 2018
and Crl.M.P.Nos.15907 & 15913 of 2018

Mohammed Shamsulhudha ... Petitioner/Accused
in both Crl.O.Ps
Vs.

R.Duraisamy ...Respondent/Complainant
in both Crl.O.Ps

COMMON PRAYER: Criminal Original Petition filed under Section 482 of the Cr.P.C., to set aside the order dated 31.08.2018 made in Crl.M.P.Nos.9486 and 9485 of 2018 in C.C.No.29 of 2015 on the file of the Judicial Magistrate, Fast Track Court @ ML.No.II, Coimbatore.

For Petitioner in both Crl.O.Ps. :Mr.K.S.Karthik Raja

COMMON ORDER

These petitions have been filed challenging the order passed by the Court below dismissing the application filed by the petitioner for recalling and further cross-examining the PW1.

2. It is seen from the records that the learned counsel for the petitioner had already cross-examined PW1. The petitioner thereafter changed his counsel and the new counsel had filed the present petition seeking to recall PW1 for further cross-examination. It will be relevant to extract the averments made in the petition seeking to reopen the case:-

"5.The petitioner submits that his earlier counsel did not ask necessary and vital questions with regard to the petitioner actual transaction with the respondent. The petitioner has changed his counsel and now the present counsel is appearing for the petitioner in the present case. Further the petitioner's earlier counsel did not ask any necessary questions while cross examining the PW1 to prove that the petitioner is not guilty of offence.

The petitioner submits that further cross examination of the respondent is necessary and vital in order to prove the petitioner is not guilty of offence. So it is absolute necessary for the petitioner to reopen the above case and recall the PW1 for further cross examination. Hence it is just and necessary to recall the PW1 for the purpose of cross examination."

3. The learned counsel for the petitioner would submit that it becomes necessary for the petitioner to recall PW1 in order to put certain vital questions with regard to the actual transaction and therefore, an opportunity must be given to the petitioner to recall PW1 for further cross-examination.

4. The Court below while considering the petition has held that the cross-examination of PW1 was completed on 06.09.2016 and the evidence on the side of the defence was closed on 17.10.2016. Thereafter, the petitioner did not appear before the Court and therefore, a bailable warrant has also been issued on 17.10.2016 and it was recalled on 24.07.2018. Thereafter, the case was posted for arguments on 01.08.2018. When the matter was taken up on 01.08.2018, the learned counsel for the complainant had advanced their arguments and the case was posted for arguments on the side of the petitioner on 07.08.2018 and 27.08.2018. However, the learned counsel for the petitioner did not advance any arguments. The case was therefore posted for judgment on 04.09.2018. In the meantime, the present petition to recall PW1 for further cross-examination was filed on 31.08.2018. The Court below had taken into consideration the conduct of the petitioner right through the proceedings and has given a categorical finding that the present petition has been filed only with a view to protract the proceedings.

5. This Court does not find any illegality or infirmity in the order passed by the Court below. One of the main reason that has been stated in the petition for recall PW1 for further cross-examination is that the petitioner has changed the counsel and the present counsel found that the earlier counsel had not put certain important question to PW1 during the course of cross-examination. The Hon,ble Supreme Court in State of Haryana Vs. Ram Mehar and Others Etc. Etc. reported in 2017(1) MLJ (Cr1) 437(SC) has categorically held that the change of counsel and the fact that the earlier counsel has not put some questions are no grounds to recall the witnesses under Section 311 of Cr.P.C. This Judgment will squarely apply to the facts of the present case.

6. In the result, these Criminal Original Petitions are dismissed. Consequently, connected miscellaneous petitions are

also closed. The Court below is directed to complete the proceedings within a period of two months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rpl

To

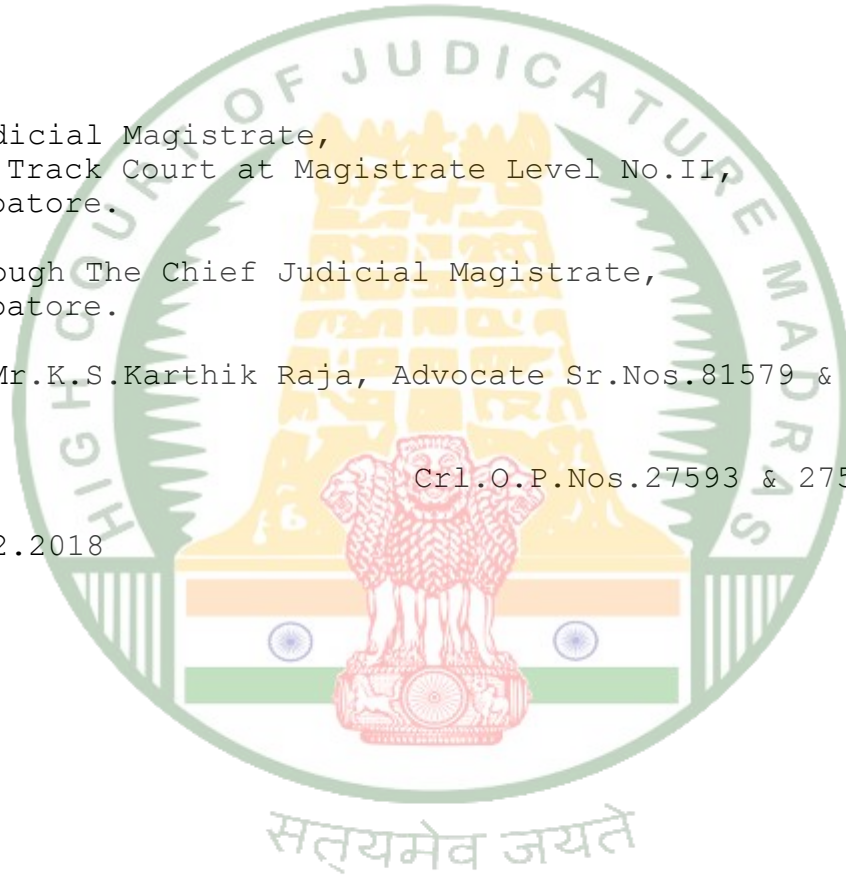
1. The Judicial Magistrate,
Fast Track Court at Magistrate Level No.II,
Coimbatore.

2. do through The Chief Judicial Magistrate,
Coimbatore.

+2 cc to Mr.K.S.Karthik Raja, Advocate Sr.Nos.81579 & 81580

SV(CO)
CSL/18.12.2018

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