



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD) .No.17682 of 2014

and

M.P (MD) .No.1 of 2014

Prabhu ... Petitioner/Accused
Vs.

S.Ganesan ... Respondent/Complainant

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the order passed by the learned Judicial Magistrate (Fast Track), Thoothukudi in Crl.M.P.No.3778 of 2014 in C.C.No.273 of 2013 dated 09.08.2014 and set aside the same as illegal and allow the petitioner to recall the complainant, who examined as P.W.1 for further cross examination.

For Petitioner : Mr.S.Vanchinathan

For Respondent : Mr.B.Rooban

ORDER

This petition is filed to challenge the order passed in Cr.M.P.No.3778 of 2014 in C.C.No.273 of 2013, dated 09.08.2014, on the file of the learned Judicial Magistrate(Fast Track), Thoothukudi, thereby dismissing the petition filed by the petitioner herein under Section 311 Cr.P.C. for further cross examination of P.W.1.

2.The learned counsel for the petitioner would submit that he filed a petition under Section 311 Cr.P.C to recall P.W.1, namely, the complainant only to prove the source of money lend to the petitioner. But, the learned Magistrate wrongly understood that the petitioner sought to be examined the sons of P.W.1 and therefore, that relief cannot be granted and dismissed the said petition, whereas the petitioner seeks relief to recall P.W.1 for further cross-examination. Hence, the petitioner is before this Court seeking to set aside the order passed by the learned Judicial Magistrate, Fast Track Court, Thoothukudi.

3.The learned counsel for the respondent/complainant would submit that though the learned Magistrate in the conclusion portion mistakenly stated that the recalling of the sons of P.W.1 is not permissible, the reasons stated in the order are correct



and the order passed by the Judicial Magistrate is not liable to be interfered. Therefore, he sought for dismissal. Further, he submitted that the case is of the year 2013 and the petition filed only to drag on the proceedings. Further, he would submit that already the respondent/de-facto complainant produced all the materials evidence for his source of income to lend money to the petitioner herein. Therefore, he sought for dismissal of the petition.

4. Admittedly, P.W.1 has been examined. It is seen that the petition under Section 311 Cr.P.C has been filed by the petitioner herein to prove whether the complainant has received money from his sons. It is also seen from the cross-examination of P.W.1 that already the complainant admitted that every month his sons sent a sum of Rs.10,000/- (Rupees Ten Thousand only) to him. Further, he would submit that the sons also sent money, whenever the complainant required. Further, the trial Court observed that the accused is at liberty to call for the Bank Statement and the money transaction between the complainant and his sons. It is not necessary to examine the complainant's sons in this regard.

5. The learned counsel for the petitioner also restricted his prayer to cross-examine only P.W.1 and he also undertakes that he will not examine the sons of the complainant.

6. Considering the above submission made by the learned counsel for the petitioner, the order passed in Cr.M.P.No.3778 of 2014 in C.C.No.273 of 2013 dated 09.08.2014 by the learned Judicial Magistrate(Fast Track), Thoothukudi, is set aside and the petitioner is allowed to cross examine P.W.1 alone and the petitioner shall not call the sons of complainant for examination and also considering the year of the Calendar Case, the learned Magistrate is directed to complete the entire trial process, within a period of three months from the date of receipt of a copy of this order.

7. With the above direction, the Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar (CS-II)



To

1. The Judicial Magistrate (Fast Track Court),
Thoothukudi.

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Cr1.O.P. (MD) .No.17682 of 2014

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