



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Cr1.O.P. (MD) .No.21159 of 2015

and

M.P. (MD) .No.1 of 2015

J.Ibrahim Shah

... Petitioner / Petitioner / Accused

Vs.

M.Nagarajan

... Respondent / 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 dated 30.06.2014 made in Cr1.M.P.No.1428 of 2014 in S.T.C.No.491 of 2013, on the file of the District Munsif cum Judicial Magistrate, Vadipatti and set aside the same.

For Petitioner : Mr.T.Vadivelan

For Respondent : Mr.R.Ramasamy

O R D E R

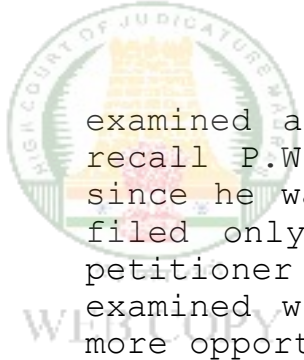
This Criminal Original Petition has been filed challenging the order dated 30.06.2014, made in Cr1.M.P.No.1428 of 2014, in S.T.C.No.491 of 2013, on the file of the District Munsif cum Judicial Magistrate, Vadipatti, thereby, dismissing the petition filed by the petitioner herein under Section 311 Cr.P.C. to recall P.W.1.

2.The case of the complaint is that the petitioner has borrowed a sum of Rs.3,00,000/- on 20.10.2010. The petitioner did not repay the said amount, On 15.09.2012, the petitioner had issued a cheque for a sum of Rs.3,00,000/-. When this cheque was presented, the same was returned with an endorsement "In sufficient funds". Hence the respondent Police filed a complaint against the petitioner under Section 138 of the Negotiable Instruments Act.

3.The learned counsel appearing for the petitioner would submit that the trial had already commenced and P.W.1 was examined and cross-examination was also over. But the defence counsel did not cross-examine P.W.1 fully due to non-availability of necessary documents and some vital points of the case has not been examined with P.W.1. Therefore, he filed a petition to recall P.W.1. He prayed to set aside the order passed by the learned Judicial Magistrate.

4.There is no representation on behalf of the respondent.

5.On perusal of the documents, a complaint has been filed on 06.12.2012. It was taken cognizance in the year 2013 in S.T.C.No.491 of 2013. Thereafter, the complainant himself was



examined as P.W.1. On 28.02.2014, a petition had been filed to recall P.W.1 to cross-examine fully with the available documents, since he was not examined at the threshold. The petition has been filed only to drag the proceedings. It is also seen that the petitioner have obtained some documents and it has to be cross-examined with P.W.1. Therefore, the petitioner can be given one more opportunity to cross examine P.W.1.

6.Considering the above facts and circumstances of the case, this Court is inclined to set aside the order passed by the learned Judicial Magistrate and accordingly, the order made in CrI.M.P.No.1428 of 2014 in S.T.C.No.491 of 2013, on the file of the District Munsif cum Judicial Magistrate, Vadipatti is set aside. This Court already directed the learned Judicial Magistrate, Vadipatti, to complete the trial proceedings within a period of four months from the date of receipt of a copy of this order, vide order dated 25.10.2018 in CrI.O.P.(MD).No.18673 of 2015 and as such, the learned District Munsif cum Judicial Magistrate Vadipatti, is directed to complete the proceedings of cross examination of P.w.1 in S.T.C.No.491 of 2013 within a period of one month from the date of receipt of a copy of this order and the petitioner is directed to co-operate with the trial proceedings.

7.In view of the above, this Criminal Original Petition stands allowed, Consequently, connected miscellaneous petitionn is closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1. The District Munsif cum Judicial Magistrate,
Vadipatti.

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.T.Vadivelan, Advocate Sr.No.93020

TSG

KM-VB/SV/SAR1/11.12.2018/2P/4C

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30.10.2018