



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 03.09.2018

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

WEB COPY

CRL.O.P. (MD) No.22708 of 2016
and
CRL.M.P. (MD) No.11882 of 2016

Thiruvalluvan ... Petitioner/Complainant
-Vs-
G.Kalaiselvi ... Respondent/Accused

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to set aside the order, dated 19.09.2016 passed in Cr.M.P.No.3229 of 2016 in C.C.No.176 of 2010 on the file of the learned Judicial Magistrate No.I, Tiruchirappalli, Tiruchirappalli District.

For Petitioner : Mr.A.Thiruvadikumar
For Respondent : No Appearance

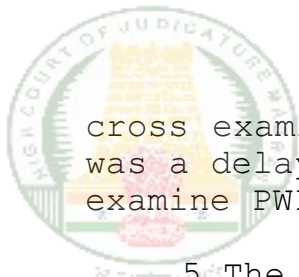
ORDER

This petition has been filed by the petitioner against the order passed under Section 311 of Cr.P.C permitting the respondent to reopen and cross examine PW1.

2.It is seen from the records that PW1 was examined on 11.09.2012 and the respondent did not choose to cross-examine PW1 till the year 2016. After nearly four years when the case was at the stage of final arguments, the respondent had chosen to file this petition to reopen and cross-examine PW1. The only reason assigned by the respondent for not cross-examining PW1 was his lack of knowledge about his right and the counsel did not cross examined PW1.

3.The court below by an order, dated 19.09.2016, has thought it fit to allow the said petition. The Court below has gone on the footing that in order to ensure fairness of trial the accused person must be given an opportunity.

4.This Court has gone through the records placed before it. The Court below has completely forgotten the provisions under Section 309 of Cr.P.C. and the Judgment of the Honourable Supreme court in *Vinod Kumar Vs. State of Punjab*, reported in 2015 (3) SCC 220. The Honourable Supreme Court has held that it is the duty of the accused person to examine witnesses on the day when he is examined in chief. The accused cannot wait for four years and at the time of final arguments, file a petition to reopen the case to



cross examine PW1 even without assigning any reason as to why there was a delay of four years in filing the petition to reopen and cross examine PW1.

5. The Court below went wrong in allowing the petition. The Calendar Case is of the year 2010 and for the last eight years, the proceedings initiated under Section 138 of the Negotiable Instruments Act is pending. The purpose of the very Act will be defeated if the applications are allowed in the manner it was allowed by the Court below.

6. In fine, the order of the Court below is hereby set aside and the Criminal Original Petition is allowed. There shall be a direction to the Court below to dispose of C.C.No.176 of 2010 within a period of two months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar (CS-II)

To

The Judicial Magistrate No.I, Tiruchirappalli.

CRL.O.P. (MD) No.22708 of 2016
03.09.2018

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