



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 14.08.2018
CORAM
THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.(MD)No.9529 of 2018
and
CRLMP (MD)No.4218 of 2018

WEB COPY

N.Kalyanasundharam

... Petitioner/Accused

Vs.

K.M.Chandran

...Respondent/Complainant

PRAYER:- Petition filed under Section 482 of Criminal Procedure Code, to call for the records of the impugned order dated 06.03.2018 passed in CRMP(No).8550 of 2017 in CC No.184 of 2016 on the file of the Learned District Munsif cum Judicial Magistrate, Aundipatti and set aside the same and to direct the Court concerned to permit further cross examination of PW1 by recalling PW1.

For Petitioner : Mr.J.Selvam
For respondent : M.M.Pounraj

ORDER

This Criminal Original Petition has been filed challenging the order passed by the District Munsif cum Judicial Magistrate, Aundipatti, dismissing the petition filed under Section 311 of CrPC by the petitioner to recall and cross examine the complainant, who was examined as PW.1.

2.The learned Counsel for the petitioner would submit that PW.1 was already cross examined by the petitioner on 07.09.2017. Subsequently, there are certain materials, which have come to the knowledge of the petitioner and the same has to be put by way of cross examination against PW.1.

3.The learned Counsel for the petitioner further submitted that in a case filed under Section 138 of Negotiable Instruments Act, burden is upon the accused to prove that the cheque was not issued towards any debt or liability and in order to discharge the said burden, sufficient opportunity must be given to the petitioner. The learned Counsel would further submit that the trial Court erred in dismissing the petition filed for recalling PW.1.

4.Per contra, the learned Counsel appearing for the respondent would submit that the petitioner has sufficiently cross examined PW.1 and the case was at the stage of defence witness and at that point of time, the application was filed for recalling PW.1. The learned Counsel would submit that the petition was filed only with a



view to drag on the proceedings. The learned Counsel further submitted that the Court below has categorically found that the petition that has been filed for recalling PW.1, does not assign any reason as to why PW.1 has to be recalled and cross examined. Therefore, the learned Counsel would submit that there is no ground to interfere with the order passed by the Court below.

5. In the facts and circumstances of the case, it is seen that the complainant examined himself as PW.1 and he has already been cross examined by the petitioner. Thereafter, the petitioner got certain materials, which he wanted to confront by way of cross examination of PW.1. In a petition of this nature, it will not be necessary for the petitioner to state as to what materials are going to be put against PW.1 in cross examination. Assigning such reasons would make the very purpose of cross examination a wasteful exercise. Therefore, the Court below was not right in finding that the petitioner has not given any particulars with regard to the materials that are going to be put in cross examination of PW.1

6. As rightly submitted by the learned Counsel for the petitioner, since the burden of proof is upon the petitioner, sufficient opportunities must be given to the petitioner to discharge that burden. However, it must also be ensured that in the guise of enquiry, the petitioner is not permitted to drag the proceedings endlessly.

7. The order of the learned District Munsif cum Judicial Magistrate, Aundipatti made in CRMP No.8550 of 2017 dated 06.03.2018 is hereby set aside. The Court below shall fix a date for appearance of PW.1 and on the very same day, the Counsel for the petitioner has to cross examine PW.1 and complete the exercise on the same day. If the petitioner fails to cross examine PW.1 on the day when he appears before the Court, the petitioner shall forfeit his right to cross examine PW.1 thereafter.

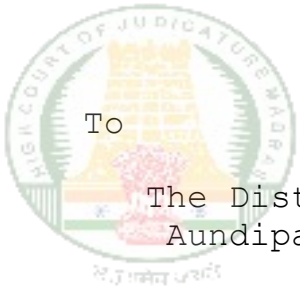
8. The learned District Munsif cum Judicial Magistrate, Aundipatti is directed to complete the proceedings as expeditiously as possible.

9. The Criminal Original Petition is disposed of on above terms. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar (CS-III)



To

The District Munsif cum Judicial Magistrate,
Aundipatti

+1CC to Mr.J.Selvam, Advocate, SR.No.78785
+1CC to M.M.Pounraj, Advocate, SR.No. 78906

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