



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.12.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P. (MD) No.21905 of 2018

Jeyapandi : Petitioner
Vs.

Kumaresan : Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records and set aside the dismissal order in Crl.M.P.No.1393 of 2018 dated 19.10.2018 in S.T.C.No.93 of 2016 passed by the learned Judicial Magistrate, Uthamapalayam, Theni District.

For Petitioner : Mr.G.Karuppasamy Pandiyan

ORDER

This criminal original petition has been filed to set aside the dismissal order dated 19.10.2018 passed in Crl.M.P.No.1393 of 2018 in S.T.C.No.93 of 2016 by the learned Judicial Magistrate, Uthamapalayam, Theni District, wherein the learned Judicial Magistrate has dismissed the petition filed under Section 311 Cr.P.C. for recalling P.W.1/ complainant.

2.The learned counsel for the petitioner would submit that the petitioner is the accused in S.T.C.No.93 of 2016 pending on the file of the learned Judicial Magistrate, Uthamapalayam, Theni District, for an offence under Section 138 of Negotiable Instruments Act and he would submit that he has not cross examined P.W.1 and his petition to recall P.W.1 had been dismissed. The learned counsel would further submit that though there are certain lapses on the part of the petitioner/accused, by not cross examining the complainant/P.W.1 by availing the opportunity granted to him, if he is not allowed to recall and cross examine P.W1 it would amount to a case of no defence and thereby, resulting in a second round of litigation.

3.The learned counsel for the petitioner would further submit that the learned Judicial Magistrate without considering the said aspect, had rejected the same, by order dated 19.10.2018.

<https://hcservices.ecourts.gov.in/hcservices/>

4.On going through the order passed by the learned Judicial



Magistrate, this Court finds that there is no illegality and error. The trial Court has rightly followed the mandate of the Hon'ble Apex Court in the case of Vinodkumar Vs. State of Panjab.

5. However, this Court is able to see that if P.W.1 is not allowed to be cross examined, it would amount to a case of no defence causing much prejudice to the petitioner/accused. This Court is of the opinion that the petition to recall and cross examine P.W.1 can be allowed on imposing cost and terms in the interest of justice.

6. In view of the above, the learned Judicial Magistrate, Uthamapalayam, Theni District is directed to allow the petitioner to recall and cross examine P.W.1 on condition that the petitioner/accused shall pay a sum of Rs.5,000/- to the Legal Aid Service Authority attached to this Court and the receipt should be produced before the learned Judicial Magistrate on the next date of hearing date on i.e., 17.12.2018. P.W.1 shall be handed over the copy of his deposition in chief for refreshing his memory and the petitioner shall cross examine him on the same day without taking adjournment.

7. With the above observation, this Criminal Original Petition is closed with a further direction to complete the trial as expeditiously as possible.

Sd/-

Assistant Registrar(cs-I)

/True Copy/

Sub Assistant Registrar(cs-II)

To:

The Judicial Magistrate,
Uthamapalayam, Theni District.

Copy To:

The Officer In-Charge,
Legal Aid Service Authority
Madurai Bench of Madras High Court,
Madurai

Cr1.O.P. (MD) No.21905 of 2018
12.12.2018.

CP

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