



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **31.10.2018**

CORAM

THE HONOURABLE MR. JUSTICE **N.ANAND VENKATESH**

CRL.O.P. (MD) No.19418 of 2018

Senthamarai Kannan
Petitioner

...

Vs

Sundar Rajan

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying, to set aside the order of the Judicial Magistrate No.IV, Tiruhirappalli in Cr.M.P.No.7423 of 2018 in C.C.No.76 of 2014 dated 20.07.2018.

For Petitioner : Mr.N.Anandakumar

ORDER

This petition has been filed against the dismissal of the application filed under Section 311 Cr.P.C., for re-calling P.W1 and to further cross examination.

2.The learned counsel for the petitioner would submit that P.W1 was examined in this case on 23.01.2017. The learned counsel would further submit that P.W1 was partly cross-examined on 18.08.2017. Thereafter, since the learned counsel for the petitioner did not cross-examine P.W1, the Court below closed the cross-examination of P.W1 on 01.02.2018. Thereafter, on 10.04.2018, the petitioner filed an application under Section 311 Cr.P.C., to re-call and conduct further cross-examination of P.W1. This petition has been dismissed by the Court below on the ground that in spite of several chances given to the petitioner, he did not choose to cross-examine P.W1 and the petition itself has been filed only to protract the proceedings.

3.This Court is not able to find any illegality or irregularity in the order passed by the Court below. In fact, several chances were given to the petitioner to cross-examine P.W1 and the learned counsel did not choose to cross-examine P.W1.

4.The learned counsel for the petitioner would submit that the counsel representing the petitioner failed to cross-examine P.W1 and the petitioner should not suffer the consequences. The learned counsel would further submit that one last opportunity can be given



to the petitioner to cross-examine P.W1. Since the petitioner is an accused, facing proceedings under Section 138 of the Negotiable Instruments Act, 1881, he will have to rebut the presumption under Section 139 of the Negotiable Instruments Act.

5. In the facts and circumstances of the case, this Court is of the considered view that one last chance can be given to the petitioner to cross-examine P.W1. The order of the trial Court in Cr.M.P.No.7423 of 2018 in C.C.No.76 of 2014 dated 20.07.2018 is hereby set aside. The Court below shall fix the date for the examination of P.W1. On the day, when P.W1 appears before the Court below, the learned counsel for the petitioner shall examine him on the same day. If for any reason, the petitioner fails to cross examine P.W1 on the same day, the petitioner shall forego his right to cross-examine P.W1 thereafter. The petitioner shall pay a cost of Rs.1,000/- to P.W1, when he appears before the Court below for cross-examination.

6. This criminal original petition is disposed of with the above direction and the Court below is directed to complete the proceedings in C.C.No.76 of 2014 within a period of two months from the date of receipt of copy of this order.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS-II)

To

1. The Judicial Magistrate No.IV,
Tiruchirappalli.

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

+1 CC To MR.N.ANANDA KUMAR, Advocate SR. NO. 93794

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MM

TR/RSK/SAR-II (20.11.2018) 2P 4C