



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED : 28.11.2018  
CORAM

THE HONOURABLE MR.JUSTICE A.D. JAGADISH CHANDIRA

WEB COPY

Cr1.O.P.(MD)No.19604 of 2018  
and  
Cr1.M.P (MD) No.8935 of 2018

K.John Rose . . . . Petitioner/Petitioner/Accused  
Vs.

C.Iyya Pillai . . . . Respondent/Respondent/Complainant

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to allow this petition and set aside the order passed in C.M.P.No.4310 of 2018 in STC No.195 of 2018 on the file of the Judicial Magistrate No.I, Padmanabhapuram, dated 22.10.2018.

For Petitioner : Mr.C.K.M.Appaji  
For Respondent : No appearance

**ORDER**

This Criminal Original Petition has been filed seeking to set aside the order passed by the learned Judicial Magistrate No.I, Padmanabhapuram, dated 22.10.2018, in C.M.P.No.4310 of 2018 in STC No.195 of 2018, dismissing the petition filed by the petitioner to recall and cross examine P.W.1.

2. The learned counsel for the petitioners would submit that the petitioner is the accused in STC No. 195 of 2018 filed the respondent/complainant for offence under Section 138 of the Negotiable Instrument Act. He would submit that PW 1 was examined on 10.02.2017 and Ex.P.1 to Ex.P.5 were marked on his side. He would also submit that on his request the case was posted on 19.04.2017 for cross examination. However on that day the counsel for the petitioner / accused was not present and thereby evidence was closed. He would further submit that whileso originally the case was pending on the file of the learned Judicial Magistrate, Eraniel in STC No.698 of 2015 and thereafter the case was transferred and taken on file in STC No.244 of 2018 on the file of the Fast Track Court, Eraniel and once again the case was transferred and was taken on file in STC No. 195 of 2018 on the file of the learned Judicial Magistrate No.I, Padmanapuram. Due to transfer of the complaint to various courts , the petitioner was unable to file the petition to recall immediately. In the meanwhile due to lack of proper advice , the petitioner has not filed a petition to recall witness and evidence on the side of the complainant was closed and the matter was posted for 313(1)(b) Cr.P.C questioning on



26.09.2018 and only after that the petitioner has filed this petition. He would submit that cross examination of PW is very much essential for arriving at just decision of the case. He would also submit that any stringent conditions may be imposed and that the petitioner may be permitted to recall the witnesses or else it will be a case of no defence and the petitioner will have to undergo the ordeal of second round of litigation at a later point of time. He would also submit that the petitioner will undertake to cross examine the respondent/ complainant on the same day of his appearance before the trial court without taking any further adjournment.

3. Though notice has been served on the respondent and private notice is also served and proof affidavit has also been filed, there is no representation on the side of the respondent. I have gone through the records. This Court is of the opinion that there is no error or illegality in the order passed by the learned Judicial Magistrate No.I, Padmanabhapuram, as it has been passed following the dictum laid down by the Hon'ble Supreme Court in Vinod Kumar vs. State of Punjab [2015(1) MLJ (crl) 288] .

4. However this Court is of the opinion that cross examination of PW.1 is very much essential for arriving at a just decision of the case or else, it would be a case of no defence ultimately resulting in miscarriage of justice. In such circumstance this Court feels that one opportunity be granted to the petitioner to recall and cross examine PW.1 and thereby the learned Judicial Magistrate No.I, Padmanabhapuram is directed to recall PW 1 and permit the petitioner to cross examine him on the same day of appearance.

5. As stated earlier, this Court finds that there is no infirmity in the order passed by the Sessions Judge. However, this Court is of the opinion that one more opportunity can be given to the petitioner to recall and cross examine P.W.1. The trial Court is directed to fix the date for appearance of P.W 1 and on his appearance before the Court, the counsel for the petitioner /accused can be permitted to cross examine him and if for any reason the petitioner fails to cross examine the witnesses even on account of boy-cott of the Courts, the petitioner will forfeit his right to recall the witnesses again. The petitioner shall complete the cross examination on the same day without taking further adjournment. In the event, PW1 is unable to appear on that date, the trial Court shall fix another date convenient for cross examination. The petitioner shall pay costs of Rs.5000/- (Rupees Five Thousand only) to the credit of the High Court Legal Services Committee, within a period of one week from the date of receipt of copy of this order and file a photocopy of the receipt along with a memo for reporting compliance in the Registry and also before the trial court.

6. The Court below shall ensure that the direction given by the Hon'ble Supreme Court in Vinod Kumar vs. State of Punjab [2015 (1) MLJ (crl) 288] is strictly complied with.



7. In the result the Criminal Original Petition is allowed on the above terms. The above directions given by this Court shall be strictly complied with. Consequently connected miscellaneous petition is closed.

WEB COPY

/True Copy/

Sd/-

Assistant Registrar(Records)

Sub Assistant Registrar(CS-III)

To

The Judicial Magistrate No.I,  
Padmanabhapuram

**Copy To:**

The Secretary,  
High Court Legal Services Authority,  
Madurai Bench of Madras High Court,  
Madurai.

+1CC to Mr.C.K.M.Appaji, Advocate, SR.No.22287

Cr1.O.P. (MD) No.19604 of 2018  
and  
Cr1.M.P (MD) No.8935 of 2018  
28.11.2018

AAV  
ES/SKN/RSK/SAR 3/05.12.2018/3P/4C