



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 18.12.2018

CORAM:

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THE HONOURABLE MR.JUSTICE A.D. JAGADISH CHANDIRA

Crl.O.P. (MD) .No.22257 of 2018
and
Crl.M.P (MD) No.10393 of 2018

S.E.Moorthi ... Petitioner/Petitioner/Accused

Vs.

Chinnamani ... Respondent/Respondent/Complainant

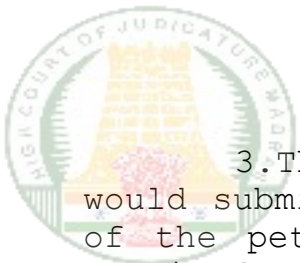
PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the order dated 04.12.2018 made in Cr.M.P.No.5477 of 2018 in S.T.C.No.4734 of 2015, on the file of the Judicial Magistrate, Manapparai and set aside the same.

For Petitioner : Mr.T.Vadivelan

ORDER

This Criminal Original Petition has been filed seeking to set aside the order passed by the learned Judicial Magistrate, Manapparai made in Cr.M.P.No.5477 of 2018 in S.T.C.No.4734 of 2015, dated 04.12.2018 dismissing the petition to re-call the P.W.1 for cross-examination.

2.The learned counsel appearing for the petitioner would submit that the petitioner is an accused in S.T.C.No.4734 of 2015 pending on the file of the Judicial Magistrate, Manapparai for an offence under Section 138 of the Negotiable Instruments Act. He would further submit that after commencement of trial, P.W.1 was examined in chief on 12.02.2016 and exhibits P1 to P6 were marked. However, the petitioner was unable to cross-examine the complainant P.W.1 for want of clarification and thereby, the examination on the side of the complainant was closed and the matter was posted for examination of the accused side witnesses. On 14.03.2016 the petitioner has filed the petition to re-call the witness in Cr.M.P.No.1295 of 2016 and the same was allowed on condition to cross-examine the P.W.1 on the very next hearing date. In the meanwhile, the petitioner had filed a quash application in Crl.O.P.No.5237 of 2016 and the matter was stayed. Based on the judgment of the Hon'ble Supreme Court in Asian Resurfacing of Road Agencies v. Central Bureau of Investigation, the Trial Judge posted the matter for defence witness on 28.09.2018. Meanwhile, the quash petition has also been disposed of with a direction to complete the trial.



3. The learned counsel appearing for the petitioner further would submit that though there had been certain lapses on the side of the petitioner, it is a case where P.W.1 has not been cross-examined and thereby it can only be a case of no defence, resulting in great prejudice to the petitioner. He would further submit that the fair trial being made the object of Criminal Procedure Code, opportunity may be given to the petitioner to ensure that such fairness is not harmed in any manner and he would pray that the petitioner may be permitted to recall and to cross-examine P.W.1 on imposition of costs and fixing terms. The learned counsel for the petitioner would further submit that the case stands posted on 21.12.2018 for arguments and on the day if P.W.1 appears, the petitioner will be able to cross-examine him without any delay.

4. I have gone through the order passed by the learned Magistrate, I find that no infirmity or error in the order. Further, it is seen that the P.W.1 has not been cross-examined and in such circumstances, it will be a case of no defence causing prejudice to the petitioner and thereby opening the doors for second round of litigation. Though this court deprecates the attitude of the petitioner, this Court is of the opinion that one more chance is given to the petitioner in the interest of justice.

5. In view of the above, this Court directs the learned Judicial Magistrate, Manapparai to permit the petitioner to recall and cross-examine the P.W.1. The petitioner shall cross-examine the P.W.1, who is the complainant, on the same day of his appearance without taking any further adjournments. This Court imposes a cost of Rs.5,000/-. Out of which, Rs.4,000/- shall be paid to the Legal Services Authority, Madurai Bench of Madras High Court, Madurai. The petitioner is directed to produce the receipt on payment of cost before the trial Court on the next hearing date and he shall pay a sum of Rs.1,000/- to the complainant on the date of hearing.

6. With the above observation, this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(cs-II)

/True Copy/

Sub Assistant Registrar(cs-III)

To

1. The Judicial Magistrate,
Manapparai.

Copy To:

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

1. The Officer in-charge,

Tamil Nadu State Legal Services Authority,



Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.T.Vadivelan Advocate in SR.No.100990

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