



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD).No.17261 of 2018

and

CrlMP(MD)No.7625 of 2018

J.Ramesh

...Petitioner

Vs.

Prabhu

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the impugned order in Crl.MP.No. 4945 of 2018 STC No. 316 of 2017 on the file of the learned District Munsif cum Judicial Magistrate No.1, Usilampatti dated 10.09.2018 and set aside the same as illegal.

For Petitioner

:Mr.I.Sam Jegan

For Respondent

:Mr.S.Poornachandran

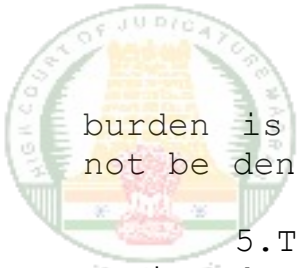
O R D E R

This petition has been filed challenging the order of the Court below dismissing the application filed by the petitioner under Section 311 of CrPC to recall and cross examine PW.1.

2.The petitioner has been arrayed as an accused in the complaint filed under Section 138 of NI Act. The complainant had examined himself as PW.1 on 11.12.2017. The matter was thereafter adjourned on several occasions and PW.1 was ultimately cross examined on 08.03.2018. Thereafter, the case was posted for questioning under Section 313 of CrPC and the petitioner did not appear before the Court and NBW was also issued against the petitioner. The defence evidence was closed on 26.07.2018. Thereafter, the petitioner filed an application for recall of warrant by a new Counsel and the warrant was also recalled. The petitioner filed an application to recall PW.1 for further cross examination and the same was dismissed by the Court below.

3.The Court below while considering the application has given findings that the application to recall PW.1 was filed after a lapse of five months after PW.1 was initially cross examined by the petitioner. The Court below has also found that the application has been filed only to drag on the proceedings.

4.The learned Counsel for the petitioner would submit that one last opportunity can be given to the petitioner to further cross examine PW.1. The learned Counsel further submitted that in view of the presumption under Section 139 of the NI Act, the



burden is upon the accused and therefore, the petitioner should not be denied the opportunity.

5.The learned Counsel for the respondent vehemently resisted the petition. The learned Counsel would submit that the complaint is of the year 2017 and the petitioner took at least six adjournments before cross examining PW.1 on the first occasion. Even thereafter, the petitioner has taken five months to file the present application to recall PW.1 for further cross examination. In the meantime, the petitioner did not appear before the Court and NBW was issued by the Court below and the same was later recalled. Therefore, the learned Counsel would submit that there are no merits in the present petition and the same has been filed only to drag on the proceedings.

6.This Court has carefully considered the submissions made on either side.

7.The petitioner admittedly has cross examined PW.1, in this case. The petitioner wants to further cross examine PW.1 in order to rebut the presumption under Section of 139 of NI Act. Therefore, this Court deems it fit to give one last opportunity to the petitioner to recall and cross examine PW.1.

8.The Court below is directed to recall PW.1 and on the day when PW.1 appears before the Court, the petitioner has to cross examine PW.1.If for any reason, the petitioner fails to cross examine PW.1 on that day when he appears, the petitioner shall forfeit his right to recall PW.1 thereafter. The petitioner is directed to pay a cost of Rs.500/- to the respondent at the time when the respondent appears before the Court as a witness.

9.In view of the above, the order passed in CrI MP No.4945 of 2018 in STC No.316 of 2017 dated 10.09.2018 is hereby set aside. The Court below is directed to complete the proceedings within a period of two months from the date of receipt of copy of this order and report compliance to the Registry, immediately after completion of the proceedings.

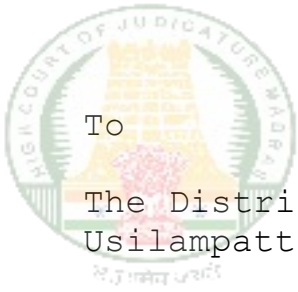
10.In the result, this criminal original petition is allowed. Consequently, CrI MP(MD)No.7625 of 2018 is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar(Cs-III)



To

The District Munsif cum Judicial Magistrate No.1,
Usilampatti.

Copy to

1. The Registrar, Judicial,
Madurai Bench of Madras High Court,
Madurai.

2. The Section Officer, (2 copies)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.S.Poornachandran, Advocate Sr.No.91506

+1cc to Mr.R.Shankar Ganesh, Advocate Sr.No.91341

DSK

VB/PM/SAR3/13.11.2018/3P/7C

Cr1.O.P. (MD) .No.17261 of 2018

23.10.2018