



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.11.2018

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THE HONOURABLE MR.JUSTICE A.D. JAGADISH CHANDIRA

Crl.O.P. (MD) No.20697 of 2018

and

Crl.M.P (MD) No.9678 of 2018

Josephine Jegatha

... Petitioner/Petitioner/Accused

Vs.

Mary Vijaya George

... Respondent/Respondent/Complainant

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records pertaining to the order passed in C.M.P.No.4379 of 2018 in STC No.129 of 2018 dated 16.10.2018 on the file of the learned Judicial Magistrate No.I, Padmanabapuram, Nagercoil and set aside the same as illegal.

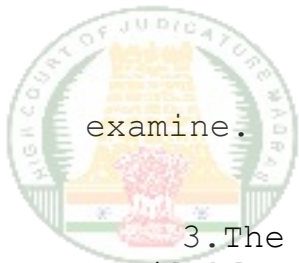
For Petitioner : Mr.K.Sivabalan

For Respondent : Mr.K.Vamanan

O R D E R

This Criminal Original Petition has been filed seeking to set aside the order passed by the learned Judicial Magistrate No.I, Padmanabapuram, Nagercoil, dated 16.10.2018, in C.M.P.No.4379 of 2018 in STC No.129 of 2018, dismissing the petition filed by the petitioner to recall and cross examine P.W.1.

2. The learned counsel for the petitioner would submit that the petitioner is facing trial for offence under Section 138 of the Negotiable Instrument Act. He would submit that petitioner had filed petition to recall and cross examine PW.1 who was examined on 02.08.2018, whereas the learned Magistrate has dismissed the petition stating that the petitioner has not availed the opportunity. He would also submit that PW1 is the essential witness to be examined to arrive at just decision of the case. He would also submit that since the petitioner was not having sufficient documents to cross examine the respondent/ complainant on the date of examination in chief, he was handicapped and thereby he was unable to cross



examine.

3. The learned counsel would further submit that discretion is available to the learned Magistrate to summon material witness at any stage and that PW 1 being a material witness the Court ought to have allowed the petitioner or else it would be case of no defence.

4. The learned counsel for the respondent would oppose the petition and submit that the petitioner was examined in chief on 02.08.2018 and at the request of the accused the case was posted to 14.08.2018 and even on that day though the respondent/ complainant was present, the petitioner did not take any steps to cross examine and there was no proper representation on that day and the evidence was closed and now the case is posted for questioning under Section 313 Cr.P.C and he objected for allowing the petition.

5. Heard both sides. 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, Padmanabapuram, Nagercoil, 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 (cr1) 288]** .

6. However this Court is able to see that P.W.1 is the crucial and material witness and if he is not cross examined, it would be a case of no defence and this Court is of the opinion that an opportunity can be given to the petitioner to recall and cross examine P.W.1 in order to arrive at a just decision and in the interest of justice.

7. The trial Court is directed to fix the date for appearance of P.W 1 on 19.12.2018 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 19.12.2012, the trial Court shall fix another date convenient for cross examination. The petitioner shall pay costs of Rs.3000/- (Rupees Three 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.

8. 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 (cr1) 288]** is strictly complied with.

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

9. 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.

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Sd/-
Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar (CS-I)

To

The Judicial Magistrate No.I,
Padmanabapuram, Nagercoil.

Copy To:-

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

+ 1 CC TO Mr.K.VAMANAN, ADVOCATE IN SR No. 98332
+ 1 CC TO Mr.G.ARAVINDHAN, ADVOCATE IN SR No. 22497

AAV

TE/PM/SAR-1 : 06/12/2018 : 3P/5C

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