

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

Crl.O.P. No.3676 of 2018

and

Crl.M.P. No.1662 of 2018

K.Ziaullah

...Petitioner

.Vs.

K.Shajahan

... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order of the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai, passed in Crl.M.P.No.7834 of 2017 in C.C.No.3079 of 2016, dated 21.09.2017.

For Petitioner : Mr.S.V.Karthikeyan

For Respondent : Mr.K.Kannan

O R D E R

The rejection of the petition under Section 311 Cr.P.C. is put to challenge in the present criminal original petition.

2.It is submitted by the learned counsel for the petitioner that, having not cross-examined P.W.1 at any point of time, in order to establish certain facts in respect of part payments, the cross-examination of P.W.1 is crucial.

3.The learned counsel for the respondent/complainant would strongly object to such an observation stating that various opportunities were given to the petitioner to cross-examine P.W.1 and when the matter is now posted for arguments, it would not be appropriate to give an opportunity to the petitioner. The Court below has also recorded such an objection, which is now relied by the learned counsel for the respondent, that many adjournments were given to the petitioner for cross-examining P.W.1 and when the case was posted for questioning under Section 313 Cr.P.C., the present application had been filed.

4.I do not find any infirmity in the findings of the Court below. It is a settled proposition that the powers under Section 311 Cr.P.C. should be exercised judicially and the

accused should not be allowed to misuse such a discretion in order to prolong the proceedings. Nevertheless, this Court has taken note of the fact that, in this proceedings under Section 482 Cr.P.C., when the petitioner claims that he had made some part payments, which he has failed to establish by way of cross-examination, this Court is of the view that if one opportunity is given and the petitioner is directed to complete the cross-examination of P.W.1 on the same day, not only the ends of justice could be secured, but it would also assist the trial Court to come to a fair and just conclusion.

5. In the light of the above observations, the order dated 21.09.2017, passed in CrI.M.P.No.7834 of 2017 in C.C.No.3079 of 2016 is set aside. Consequently, the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai, shall permit the petitioner herein to cross-examine the P.W.1 on 25.09.2019. It is made clear that the petitioner herein shall complete the cross-examination of P.W.1 on the same day and no further indulgence should be extended to the petitioner herein for the purpose of further cross-examination.

6. With the above observations, this criminal original petition is disposed of. Consequently, connected miscellaneous petition is closed.

mkn

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Metropolitan Magistrate,
Fast Track Court No.IV,
George Town,
Chennai.

+1cc to Mr.K.Kannan, Advocate, SR.No.81786

+1cc to Mr.S.V.Karthikeyan, Advocate, SR.No.81636

CrI.O.P. No.3676 of 2018 and
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Kak(24/09/2019)