

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2019

CORAM

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.11426 of 2019

A.Amjad Zahoor

... Petitioner/Accused

Vs.

Sai Traders,
Rep. By its Prop.P.Sunil H Jogi
S/o.M.Harshad Rai,
No.29, Stringer Street,
Broadway, Chennai-600 018.

... Respondent/Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed in Crl.M.P.No.1299 of 2019 in C.C.No.3701 of 2017 on the file of Metropolitan Magistrate FTC.IV, George Town, Chennai.1 and allow the Petitioner/Accused i.e., DW1 to give evidence and marking of documents.

For Petitioner : M/S.Dhurgasha D.N.

For Respondent : Mr.C.Raghavan
Government Advocate

O R D E R

This petition has been filed challenging the order passed by the Court below dismissing the application filed under Section 311 of Cr.P.C., to recall DW-1 for examination on the side of the defense.

2.It is seen from records that the petitioner is facing trial before the Court below for an offence under Section 138 of Negotiable Instruments Act. Earlier, he had filed a petition under Section 315 of Cr.P.C., and it was allowed by an order dated 06.10.2018, and the case was posted on 30.10.2018. Since the petitioner was not present an NBW was issued against him and subsequently it was recalled on 12.11.2018. The evidence was closed and the case was posted for arguments and the respondent had filed a written arguments on 11.12.2018. The case was thereafter posted for arguments of the petitioner on four occasions, and the petitioner did not argue the case, but chose to file an application under Section 311 of Cr.P.C., to recall DW-1. This petition came to be dismissed by the Court below and aggrieved by the same, the present petition has been filed before this Court.

3.The learned counsel for the petitioner submitted that the petitioner may be given an opportunity to examine himself as DW-1 in order to mark certain documents. The learned counsel further submitted that the petitioner does not intend to drag on the proceedings.

4. This Court has carefully considered the submissions made by the learned counsel for the petitioner and also the materials placed on record.

5.A reading of the order passed by the Court below reveals the fact that the petitioner was permitted to let in defence side evidence as early as on 06.10.2018 itself. Even thereafter, the case was repeatedly adjourned and the petitioner never utilised the opportunity to examine any witnesses on his side. When the matter was posted for final arguments and was finally adjourned to 06.02.2019, the present application under Section 311 of Cr.P.C., came to be filed before the Court below.

6.The Court below has rightly held that the petition filed under Section 311 of Cr.P.C., cannot be allowed in a routine fashion more particularly when the Court is able to see that it has being used as a ruse to drag on the proceedings. This Court does not find any illegality or infirmity in the order passed by the Court below and it requires no interference by this Court.

7.In the result, this Criminal Original petition is dismissed and the Court below is directed to complete the proceedings in C.C.No.3701 of 2017 within a period of two months from the date of receipt of a copy of the order.
jrs/KP

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Metropolitan Magistrate FTC.IV,
George Town, Chennai.1

Cr1.O.P.No.11426 of 2019

Kak(16/07/2019)