

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2019

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.OP No.10826 of 2019

Raj Kumar ... Petitioner/Petitioner/Accused

vs.

Alagusolaimalai ... Respondent/Respondent/ Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 08.02.2018 in Cr.M.P.No.11557 of 2018 in C.C.No.3990 of 2017 pending on the file of the Metropolitan Magistrate Court, Fast Track Court-IV, George Town, Chennai-1 and direction to cross examine within stipulated period.

For Petitioner : Mr.B.B.Sendhil Kumar

ORDER

This petition has been filed challenging the order passed by the Court below in dismissing the application filed under Section 311 of Cr.P.C. to recall PW1 for the purpose of cross-examination.

2.The petitioner is facing trial before the Court below for an offence under Section 138 of the Negotiable Instruments Act. PW1 was cross-examined in part on 27.09.2018. Subsequently, a question was raised by the trial Court about the issue of limitation to the complainant and therefore, the case was adjourned from time to time. After the clarification was given by the complainant, the case was posted for cross of PW1 on 26.10.2018 and 02.11.2018 and since the petitioner did not continue with the cross-examination of PW1, the evidence of PW1 was closed and the case was posited for questioning under Section 313 of Cr.P.C. At that point of time, the present petition came to be filed under Section 311 of Cr.P.C. and the same was dismissed by the Court below.

3.The Court below dismissed the case mainly on the ground that the petitioner was given sufficient opportunity for cross-examination of PW1 and the petitioner failed to complete the cross-examination and was dragging on the proceedings.

3.The learned counsel for the petitioner submitted that the petitioner did not intentionally drag on the proceedings and in fact, PW1 was cross-examined in part. Since the case was getting adjourned for certain clarification from the respondent, the cross-examination could not be continued. The learned counsel submitted that one last opportunity can be given to the petitioner for cross-examination for PW1.

4.The respondent has been served with the notice and there was no representation on the side of the respondent. The name of the respondent was also printed in the cause list.

5.Taking into consideration the facts and circumstances of the case, this Court deems it fit to give one last opportunity to the petitioner to recall PW1 for cross-examination. The Court below shall fix a date for cross-examination of PW1 and on that date, the learned counsel for the petitioner shall complete the cross-examination of PW1. If for any reason the petitioner fails to cross-examine PW1 on the date fixed by the Court below, the petitioner shall forfeit his right to recall PW1. The petitioner shall pay a cost of Rs.750/- to PW1 on the date of his appearance.

6.In the result, this Criminal Original Petition is allowed and the order passed by the Court below in Crl.M.P.No.11557 of 2018 in C.C.No.3990 of 2017 dated 08.02.2018, is hereby set aside. There shall be a direction to the Court below to complete the proceedings in C.C.No.3990 of 2017 within a period of three months from the date of receipt of copy of this order.

Sd/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Metropolitan Magistrate,
The Metropolitan Magistrate Court,
Fast Track Court-IV,
George Town,
Chennai-1

2.The Public Prosecutor,
High Court of Madras,
Madras.

+1cc to Mr.B.B.Senthil Kumar, Advocate, S.R.No.49625

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VG II(CO)

RRS (21/06/2019)



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