

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2019

CORAM

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.12879 of 2019

and

Crl.M.P.Nos.6657 & 6658 of 2019

S.Ramesh
Proprietor,
M/s.Krishna Trading Corporation,
No.144, Rasappa Chetty Street,
Park Town,
Chennai 600 003 Petitioner

Vs.

SLO Industries Limited,
Rep by its Executive Director,
Mr.Pratap Kumar Rakesh,
No.403/D-4, T.H.Road,
Chennai 600 019
... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 16.04.2019 made in Crl MP No.10297 of 2018 in C.C.No.9172 of 2017 on the file of Fast Track Court - II, Metropolitan Magistrate, Egmore, Chennai and allow the Criminal Original Petition.

For Petitioner : Mr.M.Murali

O R D E R

This petition has been filed challenging the order passed by the Court below dismissing the petition filed under Section 311 of Cr.PC for recalling PW1 for further cross examination.

2 The petitioner is facing trial before the Court below under section 138 of Negotiable Instruments Act. It is seen from records that the complaint was taken cognizance in the year 2011 and the chief examination was conducted in the year 2013. The

petitioner cross examined PW1 in the year 2015 and it went on till January 2016. 313 questioning was concluded on 25.01.2016 and the petitioner also examined himself as DW1 in October 2016 and documents were also marked on the side of the petitioner. At that stage, the case was transferred during the month of December 2016 to the present Court before which the proceedings are pending.

3 The case was posted for arguments on 16.08.2018 and written arguments were also filed by the respondent on 27.08.2018. The petitioner took time for filing written arguments and the matter was adjourned thrice thereafter. The Trial Court reserved the case for judgment and adjourned to 01.11.2018. Thereafter, the petitioner sought permission of the trial Court and filed his written arguments on 23.11.2018 and the case was adjourned to 21.12.2018 for judgment. At this stage, the petitioner has proceeded to file petition under Section 311 of Cr.PC seeking to recall PW1 for further cross-examination.

4 The learned counsel for the petitioner submitted that the counsel who represented the petitioner during the earlier occasion, did not properly cross-examine the witness and had not asked pertinent questions which are crucial to establish the defence of the petitioner. The learned counsel therefore submitted that an opportunity may be given to the petitioner to recall and cross-examine PW1.

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

6 This Court does not find any ground to interfere with the order passed by the Court below and the Court below has rightly dismissed the petition filed to recall PW1 for further cross-examination. It is a settled position of law that a change in counsel and the fact that the earlier counsel has not properly cross-examined the witness can never be a ground to recall any witness. This position has been made clear by the Hon'ble Supreme Court in the case of [Harjas Rai Makhija (D) Thr. Lrs. Vs. Pushparani Jain and other] reported in 2017 1 MLJ 437.

7. This Court does not find any illegality or infirmity in the order passed by the Court below. If at all the respondent Company has not been properly represented, it is always open to the petitioner to point out the same at the time of argument with the help of the available materials and it does not require recalling PW1 for this purpose. It will only unnecessarily drag on the proceedings for some more time and the present proceedings is pending from the year 2011 onwards.

8. In the result, this Criminal Original Petition is dismissed and the Trial Court is directed to complete the proceedings within a period of two months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petitions are also closed.

rka

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The II Fast Track Court,
Metropolitan Magistrate,
Egmore, Chennai.
2. -Do- Thro' The Chief Judicial Magistrate,
Egmore, Chennai.
3. The Public Prosecutor,
High Court of Madras

+1cc to Mr.M.Murali, Advocate, SR.No.44543

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Kak(25/06/2019)

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