

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 08.07.2019

CORAM
THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.OP Nos.14862 &14865 of 2019
and
Crl.M.P.Nos.7279 & 7280 of 2019

Ganesh Sankar

.. Petitioner
in both Crl.OPs

.Vs.

G.Venkatraman

..Respondent
in Crl.O.P.No.14862 of 2019

V.Ganesan

..Respondent
in Crl.O.P.No.14865 of 2019

PRAYER in Crl.O.P.No.14862 of 2019: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 24.05.2019 passed by the Judicial Magistrate 1, Salem in CMP No.1744 of 2019 in STC.No.133 of 2016 and order the learned Magistrate to re-open the case for cross-examining PW-1.

PRAYER in Crl.O.P.No.14865 of 2019: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 24.05.2019 passed by the Judicial Magistrate 1, Salem in CMP No.1739 of 2019 in STC.No.132 of 2016 and order the learned Magistrate to re-open the case for cross-examining PW-1.

For Petitioner : Mr.S.Kalyanaraman
in both Crl.OPs

COMMON ORDER

These Criminal Original Petitions have been filed against the dismissal of the applications seeking to recall PW-1 for cross examination.

2.The petitioner is facing trial before the Court below for an offence under Section 138 of the Negotiable Instruments Act. The respondent had examined himself as PW-1 and his evidence was closed and the petitioner was also questioned under Section 313 of Cr.P.C. The petitioner thereafter filed an application for recall of PW-1 for cross examination. The said petition was allowed by the learned

Magistrate, on condition that the petitioner will pay a cost of Rs.1,000/- to the respondent on or before 03.11.2018. Since this cost was not paid, the petition came to be dismissed.

3.The petitioner filed Criminal Revision before the District Court, aggrieved by the said order and the District Court set aside the order of the trial Court by permitting the petitioner to recall PW-1 without payment of any cost. The District Court also made it clear that if the petitioner fails to cross examine PW-1 on the date of his appearance, the petitioner will forfeit his right to cross examine PW-1 thereafter.

4. The matter came for hearing on 20.05.2019, and the respondent was also present before the Court. However, the petitioner failed to cross examine PW-1. Therefore, the Court below closed the evidence and also dismissed the application filed by the petitioner to reopen the evidence of PW-1.

5.When this case came up for admission, the learned counsel for the petitioner submitted that one last opportunity can be given to the petitioner to cross examine PW-1 and this Court can also fix a time limit for the completion of the proceedings. This Court in order to assess the bonafides of the petitioner passed the following interim order on 12.06.2019.

"The petitioner is directed to deposit a sum of Rs.25,000/- [Rupees twenty five thousand only) in STC Nos.132 & 133 of 2016 pending on the file of the learned Judicial Magistrate-I, Salem on or before 01.07.2019.

There shall be an order of interim stay of further proceedings in STC Nos.132 & 133 of 2016 pending on the file of the learned Judicial Magistrate-I, Salem till 08.07.2019. It is made clear that, if the petitioner does not make the deposit as directed by this Court, the stay shall stand automatically vacated and the Court below can proceed further with the main case."

6.Pursuant to the orders passed by this Court, the matter is posted today for hearing.

7.The learned counsel for the petitioner has filed a memo before this Court to the effect that the interim order passed by this Court has been complied with and a sum of Rs.25,000/- has been deposited before the Court below on 27.06.2019.

8. The private notice ordered to the respondent has also been served and an affidavit of service has been filed before this Court and the name of the respondent is also printed

in the cause list. However, there is no representation for the 2nd respondent.

9. Taking into consideration the facts and circumstances of the case and in order to afford one last opportunity to the petitioner to cross examine PW-1, this Court interferes with the orders passed by the Court below. The orders passed by the Court below in CMP Nos.1739 & 1744 of 2019 are hereby set aside. The Court below shall fix a date for the appearance of PW-1 and the petitioner shall cross examine PW-1 on the same day and complete it. If for any reasons, the petitioner fails to cross examine PW-1 on the date of his appearance, the petitioner shall forfeit his right to recall PW-1 in future.

In the result, both the Criminal Original Petitions are allowed and the Court below is directed to complete the proceedings in STC Nos.132 & 133 of 2016 within a period of three months from the date of receipt of copy of the order. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (Insp. Cell)

//True Copy//

Sub Assistant Registrar

KP

To

The Judicial Magistrate No.I,
Salem.

+2ccs to Mr.S.Kalynaraman, Advocate, S.R.No.57026 & 57027

Crl.OP Nos.14862 & 14865/2019

SJ(CO)

RRS (11/07/2019)

WEB COPY