

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :26.06.2019
CORAM
THE HONOURABLE Mr.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.16466 of 2019
and
Crl.M.P.No.8253 of 2019

Ramesh

... Petitioner/Respondent

Vs.

Stanley Raajan

... Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, against the Judgment dated 22.04.2019 passed in C.M.P.No.666/2019 in C.C.No.7 of 2017, on the file of the learned Judicial Magistrate, Fast Track Court, Alandur.

For Petitioner : Mr.S.N.Subramani

O R D E R

This petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioner under Section 311 of Cr.P.C to recall P.W.1 for further cross examination.

2.It is seen from the records that the petitioner is facing Trial before the Court below for an offence under Section 138 of the Negotiable Instruments Act. The respondent had filed the Proof Affidavit on 06.07.2017. After several adjournments the petitioner cross examined the respondent on 19.07.2018 and the case was thereafter posted for continuation of cross examination. The petitioner filed a petition under Section 91 of Cr.P.C in C.M.P.NO.1523 of 2018 for a direction to the respondent to produce certain documents. The said petition was allowed on 19.07.2018. These documents were not produced by the respondent despite the order passed by the Court below.

3.The evidence of P.W.1 was thereafter closed and the petitioner filed an application in M.P.No.666 of 2018 seeking to recall P.W.1 for further cross examination. This petition was filed mainly on the ground that the respondent did not produce any of the documents and the petitioner was waiting to cross examine the respondent on those documents. The Court below has dismissed the recall petition and aggrieved by the same, the present petition has been filed before this Court.

4.The learned counsel for the petitioner submitted that the petitioner had cross examined P.W.1 and he had put certain questions regarding certain documents which are vital to prove his defence. The case was adjourned for further cross examination and the petition filed by the petitioner under Section 91 of Cr.P.C. was also allowed and the respondent was directed to produce the documents. The respondent did not produce the documents and his evidence was also closed. The learned counsel submitted that further cross examination of the respondent is required since he has not produced the documents and certain questions will have to be put regarding those documents.

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

6.The petitioner has already taken steps by filing an appropriate petition to direct the respondent to produce certain documents. The Court has also ordered the said petition and in spite of the same, the respondent has not produced those documents. The further cross examination of the petitioner pertains to those documents. If those documents have not been produced, there is no purpose of further cross examination of P.W.1.

7.According to the petitioner, the documents are required in order to establish the defence of the petitioner and in order to rebut the presumption. The respondent has also been directed to produce the documents and he has failed to produce those documents. Therefore it is left open to the Court below to draw its own inference in accordance with Section 114(g) of the Indian Evidence Act, 1872. This does not require recalling P.W.1 for further cross examination.

8.In view of the above, this Court is not inclined to interfere with the order passed by the Court below.

9.In the result, this Criminal Original Petition is dismissed and the Court below is directed to complete the proceedings within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

jas/vs

To

1.The Judicial Magistrate,
Fast Track Court,
Alandur.

CrI.O.P.No.16466 of 2019
and
CrI.M.P.No.8253 of 2019

rv(co)
nr 13/08/2019



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