

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.18629 of 2019
and Crl MP No.9457 of 2019

P.Chandrasekar

...Petitioner/Accused

-Vs-

P.Saravana Kumar

...Respondent/Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to set aside the order dated 25.09.2018 made in Crl.M.P.No.3594 of 2016 in S.T.C.No.130 of 2014 on the file of District Munsif cum Judicial Magistrate, Perundurai.

For Petitioner : Mr.M.Guruprasad

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.PC. to recall PW1 for cross-examination.

2. The petitioner is facing trial for an offence under Section 138 of Negotiable Instrument Act. It is seen from records that the complaint was taken cognizance in the year 2014 and the proof affidavit was filed on 28.04.2015. The case was adjourned on four occasions from May 2015 to August 2015 and inspite of the same, the petitioner did not cross-examine PW.1. Therefore, the evidence of PW.1 was closed. The petitioner filed CMP No.4528 of 2015 to recall PW.1 for cross-examination. This petition was allowed by an order dated 09.02.2016. The petitioner thereafter failed to cross-examine PW1 inspite of sufficient opportunities given to the petitioner and therefore, again the evidence of PW1 was closed.

3. The petitioner again filed a petition under Section 311 of Cr.PC to recall PW.1 and the Court below by an order dated 25.09.2018 dismissed the application on the ground that the petitioner was given sufficient opportunity to cross-examine PW1 and inspite of the same, the petitioner failed to cross-examine PW1. The Court below also found that the earlier application filed by the petitioner to recall PW1 was allowed and even thereafter, the petitioner failed to cross-examine PW1.

4. The learned counsel for the petitioner submitted that the petitioner has to rebut the presumption under Section 139 of Negotiable Instrument Act and therefore, the petitioner must be given an opportunity to recall and cross-examine PW1.

5. This Court does not find any illegality or infirmity in the order passed by the Court below.

6. This petition is liable to be dismissed both on merits as well as on the ground of laches. The petitioner was given sufficient opportunity to cross-examine PW.1 and in fact, on one occasion, the application filed by the petitioner to recall PW1 was also allowed in the year 2016 and inspite of the same, the petitioner failed to cross-examine PW1. Therefore, on merits, this Court does not find any ground to entertain this petition.

7. That apart, the order was passed by the Court below on 25.09.2018 and this petition has been filed before this Court on 11.07.2019. There is an unexplained delay of nearly one year in filing this petition. It is true that there is no time limit for filing a petition under Section 482 of Cr.PC. However, that does not mean that a petition can be filed at the whims and fancies of the litigant and the litigant has to approach this Court within a reasonable time, failing which, the petition can be dismissed on the ground of laches.

8. In the result, this Court does not find any merit in this petition and accordingly, this Criminal Original Petition is dismissed. The Court below is directed to complete the proceedings in STC No.130 of 2014 on the file of District Munsif

cum Judicial Magistrate, Perundurai, within a period of two months from the date of receipt of copy of this order. Consequently the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The District Munsif cum Judicial Magistrate, Perundurai
Vepery, Periamet,
Chennai 600 007.
Tamil Nadu.
2. The Public Prosecutor
High Court of Madras,
Madras.

+1cc to Mr.M.Guruprasad, Advocate Sr.60331

Cr1.OP No.18629 of 2019

rsi[col]
srg 06/08/2019

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