



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2019

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P No.8137 of 2017
and
Crl.M.P No.5849 of 2017

R.Chenchu Raju

...Petitioner

Vs.

M.Shareefa

...Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to set aside the impugned order dated 12.01.2017 in Crl.M.P No.5422 of 2016 in C.C No.1145 of 2015 by the learned IV Metropolitan Magistrate, George Town.

For Petitioner : Mr. K.Nagarajan
For Respondent : Mr. C.Parthiban

ORDER

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

2. The petitioner is facing trial before the Court below for an offence under Section 138 of Negotiable Instruments Act. The Court below took cognizance of the offence in the year 2015. PW1 filed a proof affidavit on 02.04.2016 and the petitioner had cross examined PW1 on 27.09.2016 and 04.10.2016 and thereafter, the cross was completed and his evidence was closed. Thereafter, the petitioner was questioned under Section 313 of Cr.P.C and the case was posted for defence witness on 09.11.2016. At this stage, the present application came to be filed under Section 311 of Cr.P.C to recall PW1 for further cross examination.

3. The Court below dismissed the petition on the ground that the petitioner had sufficiently cross examined PW1 for two full days on 27.09.2016 and 04.10.2016 and that there was no need for any further cross examination of PW1 and even in the petition filed by the petitioner, the petitioner has merely stated that it is necessary to further cross examine PW1 without giving a plausible reason to recall PW1.



4. The learned counsel for the petitioner submitted that the petitioner has to rebut the presumption under Section 139 of the Negotiable Instruments Act and therefore, sufficient opportunity must be given to the petitioner to cross examine PW1. The learned counsel further submitted that any time limit can be fixed by the Court for disposal of the case and the petitioner will not drag on the proceedings.

5. The learned counsel for the respondent submitted that the Court below had properly applied its mind and had given cogent reasons while dismissing the application filed by the petitioner under Section 311 of Cr.P.C. The learned counsel further submitted that the petitioner had filed the present petition only to drag on the proceedings and there is absolutely no grounds to interfere with the orders passed by the Court below.

6. This Court has carefully considered the submissions made on either side and the materials available on record.

7. It is seen from the records that PW1 was cross examined in detail by the petitioner on 27.09.2016 and 04.10.2016. When the case was at the stage of defence witness, the present petition came to be filed to reopen and recall PW1 for further cross examination. Even in the petition, the petitioner has not stated any tangible reason to recall PW1 for cross examination and he has made only a bald averment that PW1 must be recalled for further cross examination in order to enable the petitioner to effectively defend this case.

8. This Court reminds itself the judgment of the Hon'ble Supreme Court in AG vs. Sivakumar Yadav and another reported in 2016 (2) SCC 402 wherein the Hon'ble Supreme Court had categorically held that mere observation that the recall was necessary for ensuring fair trial is not enough unless there are tangible reasons to show how fair trial will suffer without recalling the witnesses. The Hon'ble Supreme Court made it clear that recall cannot be done as a matter of course and the trial Court has to exercise its powers judiciously in order to prevent failure of justice.

9. In the considered view of this Court, the Court below has carefully considered the entire facts and circumstances and has given clear reasons as to why the petition cannot be entertained. This Court does not find any illegality or infirmity in the orders passed by the Court below and it does not require any interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.



10. In the result, this Criminal Original Petition is dismissed and the Court below is directed to complete the proceedings in C.C No.1145 of 2015 within a period of three months from the date of receipt of copy of this order. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

The IV Metropolitan Magistrate,
George Town, Chennai.

+1cc to Mr. C.Parthiban, Advocate sr.57628

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nr 13/08/2019