

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 02.07.2019

CORAM
THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P No.6407 of 2017
and
Crl.M.P Nos.4737, 4738, 6165 and 6166 of 2017

1.R.Anandan
2.Kavitha

...Petitioners

Vs.

V.Murugan

...Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to set aside the order passed in Crl.M.P No.1521 of 2017, dated 21.03.2017 pending on the file of the IV Fast Track Court, George Town, Chennai by allowing this Criminal Original Petition.

For Petitioner : Mr. R.Thirumoorthy

ORDER

This petition has been filed challenging the order passed by the Court below allowing an application filed by the respondent under Section 311 of Cr.P.C to reopen and recall PW1 to mark certain documents.

2. The petitioner is facing trial before the Court below for an offence under Section 138 of Negotiable Instruments Act. The examination of the witnesses was completed and the case was at the stage of final arguments. At that stage, a petition came to be filed by the respondent under Section 311 of Cr.P.C to reopen and recall PW1 for further examination and to mark certain documents. This petition was allowed by the Court below on the ground that an opportunity must be given to the complainant to prove his case.

3. The learned counsel for the petitioner submitted that the entire attempt of the respondent is to fill up the lacunae since the petitioner had already cross examined PW1 and elicited certain answers and in the guise of reopening and recalling PW1, the respondent wants to fill up the lacunae. The learned counsel for the petitioner further submitted that the Court below ought not to have allowed the petition at the stage of final arguments.

4. The learned counsel for the respondent submitted that the de-facto complainant must be given sufficient opportunity to prove his case and the petitioners will not be put to prejudice since they will have an opportunity to further cross examine PW1.

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

6. It is clearly seen that the respondent has made an attempt to fill up the lacunae by seeking to reopen and recall PW1. The petitioners have already cross examined PW1 and have elicited certain answers. The case was at the stage of final arguments and at that stage, the respondent had filed an application under Section 311 of Cr.P.C. The Hon'ble Supreme Court in the judgment in P.Sanjeeva Rao vs. State of Andhrapradesh reported in 2012 (7) SCC 56 has given the guidelines while considering the recalling of witnesses and one of the guideline is that it should not be used in order to fill up the gaps or to fill up the lacunae.

7. This Court is of the considered view that the order passed by the Court below suffers from illegality and the same requires interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C. The order passed by the Court below in C.M.P No.1521 of 2017 dated 21.03.2017 is hereby set aside.

8. This Criminal Original Petition is allowed and the Court below is directed to complete the proceedings in C.C No.1220 of 2016 within a period of two months from the date of receipt of copy of this order. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar

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To

The IV Fast Track Court,
Metropolitan Magistrate Court,
George Town, Chennai.

CRL.O.P No.6407 of 2017

and

Cr1.M.P Nos.4737, 4738, 6165
and 6166 of 2017

SS(CO)

RRS(01/08/2019)