

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 02.01.2019

CORAM:
THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.No.29992 of 2018
and
CRL.M.P.No.17615 of 2018

A.Rajasekar

... Petitioner

-Vs-

Sivabalan

... Respondent

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, seeking to set aside the order dated 09.08.2018 made in CrI.M.P.No.29 of 2018 in CrI.Appeal No.284 of 2017 on the file of I Additional District and Sessions Judge, Erode and to set aside the same and allow the above CrI.O.P.

For Petitioner : Mr.C.S.Saravanan

ORDER

This petition has been filed challenging the order passed by the Court below dismissing the petition filed by the petitioner under Section 391 of Cr.P.C., to permit the petitioner to give evidence in the appeal.

2. The petitioner faced the trial for an offence under Section 138 of the Negotiable Instruments Act. The learned Judicial Magistrate, (Fast Track Court No.1), Erode, by judgment, dated 10.07.2017, was pleased to convict the petitioner and imposed a sentence of six months Simple Imprisonment and to pay a sum of Rs.2,50,000/- towards compensation, in default, to undergo one month simple imprisonment. Aggrieved by the said judgment, the petitioner filed an appeal before the Court below in CrI.A.No.284 of 2017. During the pendency of the appeal, the petitioner filed an application under Section 391 of Cr.P.C., to adduce evidence.

3.The Court below has dismissed the petition mainly on the ground that sufficient opportunity was given to the petitioner to examine the witnesses on the side of defence. The Court below has categorically given a finding that the petitioner was permitted to cross-examine PW1 on 20.04.2017. Thereafter, the petitioner filed a petition under Section 254(2) of Cr.P.C., to examine one Annadurai as defence witness and the same was also allowed and DW1 was examined on 08.05.2017. The case was

thereafter posted on 17.05.2017 and the petitioner did not examine any other witnesses on the side of defence. Ultimately, the judgment came to be passed on 10.07.2017.

4.The Court below has also found that the petitioner who in spite of being given sufficient opportunity, did not examine himself as witness, cannot overcome the same by filing a petition under Section 391 of Cr.P.C., during the pendency of the appeal. Section 391 of Cr.P.C., does not cover cases of this nature and the said provision only provides for taking additional evidence or further evidence in order to enable the Appellate Court to come to a just decision. The provision cannot be used to cover up the lacuna where the petitioner in spite of being given opportunity, did not examine himself before the trial Court and he wants to do it during the pendency of the appeal. The Court below has rightly rejected the petition filed by the petitioner. This Court does not find any illegality or infirmity in the order passed by the Court below.

5. In the result, this Criminal Original Petition is dismissed and the Court below is directed to complete the proceedings in Crl.A.No.284 of 2017, within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The I Additional District and Sessions Judge,
Erode.

2.-do-Thro' Principal Sessions Judge,
Erode.

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