

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2019

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.OP No.29737 and 29739 of 2018
and Cr.MP No.17432 of 2018

M.Jaganathan

..Petitioner in both Crl.OPs

Vs.

R.Dhanraj

...Respondent in both Crl.OPs

COMMON PRAYER:

Criminal Original Petition filed under Section 482 of Cr. PC to set aside the order passed by the learned Judicial Magistrate No.1, Gobichettipalayam, Erode District in CMP No.9504 of 2018 in CC No.220/04 dated 07.12.2018 and permit to recall PW1 (Prayer in Crl.OP No.29737 of 2018) CMP No.9505 of 2018 in CC No.220/04 dated 07.12.2018 and permit to Re-open (Prayer in Crl.OP No.29739 of 2018)

For Petitioner : Mr.S.Suresh
in both Crl.OPs

For Respondents : Mr.V.P.K.Gowtham & K.Sudhakar
in both Crl.OPs

C O M M O N O R D E R

These Criminal Original petitions have been filed challenging the orders passed by the Court below dismissing the petition filed under Section 311 Cr.Pc to reopen and recall PW1 for further cross-examination.

2. The petitioner is facing trial before the Court below for an offence under Section 138 of Negotiable Instrument Act. The petitioner filed a petition before the Court below under Section 311 Cr.PC to recall PW1 on the ground that certain material points were not put to him during the course of cross-examination and therefore, one last opportunity must be given to the petitioner to further cross-examine PW1.

3. The Court below has dismissed the petition on the ground that the petitioner has already cross-examined PW1 and there was no reason to again recall PW1 for further cross examination. The Court below has also found that the reasons stated by the petitioner in the petition for recalling PW1, has already been put to PW1 during the cross-examination. That apart, the Court below also took into consideration the fact that the complaint is pending from the year 2004 onwards.

4. The learned counsel appearing for the petitioner would submit that one last opportunity must be given to the petitioner to recall PW1 for further cross-examination, since the petitioner has to rebut the presumption under Section 139 of Negotiable Instrument Act.

5. The learned counsel for the Respondent would submit that the petitioner has successfully dragged the case and filed one petition after another and the petitioner has already cross-examined PW1. Therefore, the learned counsel would submit that there is no ground to interfere with the order passed by the Court below.

6. This Court has carefully considered the submissions made on either side.

7. This Court does not find any apparent perversity in the order passed by the Court below. The case has been pending for more than 14 years. Therefore, the Court below had thought it fit not to entertain the petition filed by the petitioner.

8. This Court considering the facts and circumstances of the case, is of the considered view that one last opportunity can be given to further cross-examine PW1. This Court is also inclined to fix a time frame for completion of the proceedings.

9. The orders passed by the Court below in CMP No.9504 of 2018 & CMP No.9505 of 2018 dated 07.12.2018 are hereby set-aside. The Court below is directed to post the case on 21.01.2019 and on that day, PW1 shall be present before the Court. On the very same day, the petitioner is directed to further cross-examine PW1 and it should be completed on the same day. The petitioner is directed to pay a cost of Rs.1,500/- (Rupees thousand five hundred only) to PW1, on the day when he appears for giving evidence.

10. Accordingly, these Criminal Original Petitions are disposed of with a direction to the Court below to complete the proceedings 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

rka/rli

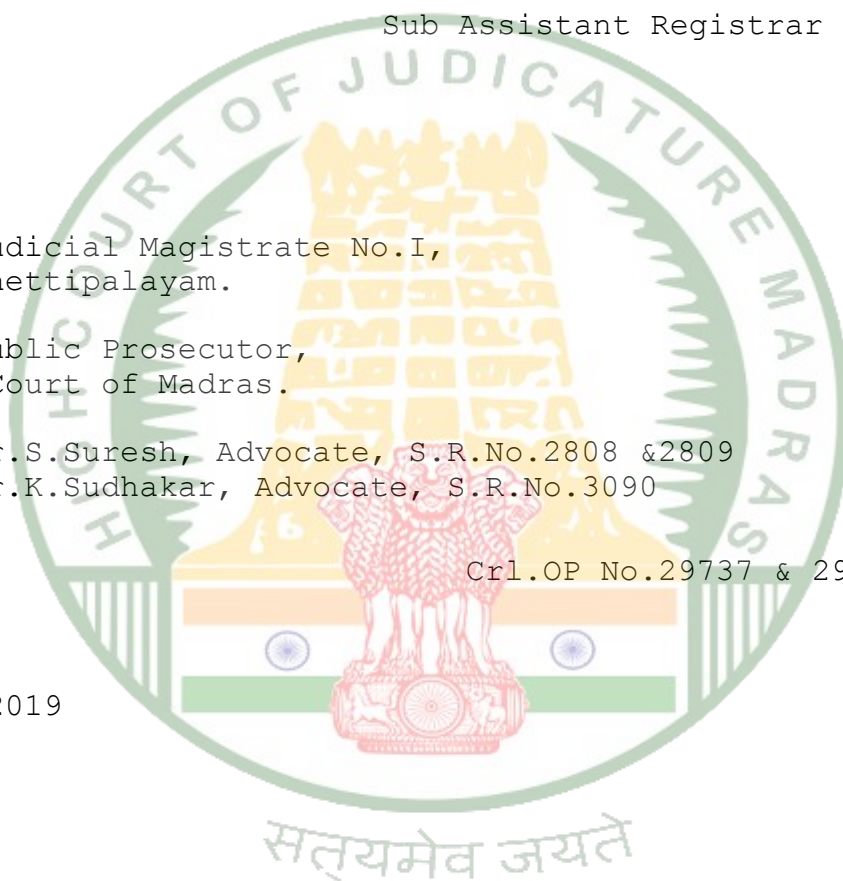
To

1. The Judicial Magistrate No.I,
Gobichettipalayam.
2. The Public Prosecutor,
High Court of Madras.

+2cc to Mr.S.Suresh, Advocate, S.R.No.2808 &2809
+1cc to Mr.K.Sudhakar, Advocate, S.R.No.3090

Cr1.OP No.29737 & 29739 of 2018

SPD(CO)
CS/11/01/2019



WEB COPY