



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.03.2019

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.O.P. (MD)No.4017 of 2019

Briji .. Petitioner/Petitioner/Accused

Vs.

Premakumaran Nair .. Respondent/Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to pass an order to call for the records and set aside the order passed in Crl.M.P.No.9274 of 2018 in S.T.C.No.876 of 2010, dated 09.01.2019 on the file of the Judicial Magistrate No.I, Kuzhithurai and allow this Criminal Original Petition in respect of witnesses P.W.1 and P.W.2 to enable cross examine.

For Petitioner : Mr.S.Sivakumar

ORDER

This petition has been filed to set aside the order passed in Crl.M.P.No.9274 of 2018 in S.T.C.No.876 of 2010, dated 09.01.2019 on the file of the Judicial Magistrate No.I, Kuzhithurai and allow this petitioner to cross examine the witnesses P.W.1 and P.W.2.

2.The learned counsel for the petitioner would submit that the respondent has filed a complaint before the learned Judicial Magistrate No.I, Kuzhithurai, against this petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act in the year 2010 for dishonour of cheque to the tune of Rs.2,00,000/- and the same was assigned as S.T.C.No.876 of 2010 and the P.W.1 was examined in chief on 16.06.2014 and the P.W.2 was examined in chief on 21.08.2015. Hence, the chief examination of P.W.1 and P.W.2 was completed in the year 2015 itself. Thereafter, the petitioner filed a petition under Section 311 Cr.P.C to recall P.W.1 & P.W.2 on the ground that since the counsel arranged by the petitioner in earlier occasion was passed away, he changed the next counsel. Since the next counsel also not properly conducted the case, he arranged the present counsel with instructions to recall the P.W.1 & P.W.2 and cross examine them. Hence, the present counsel filed a petition under Section 311 Cr.P.C. and the same was dismissed by the trial Court on the ground that the reason assigned by the petitioner is not genuine one and only in order to drag on



the proceedings the petitioner has filed the petitioner. If the petition is not allowed, the petitioner will be prejudiced and the case will be decided against him. Hence, prayed to allow this petition and the petitioner is ready to pay reasonable cost to the witnesses.

WEB COPY

3.It appears that since the petitioner was not appeared before the trial Court and cross examine the witnesses, the trial court has issued the Non Bailable Warrant for seven times and the same were recalled by the Court itself and the case is pending for more than 8 years. Considering the facts and circumstances of the case, this Court is of the opinion that till date the P.W.1 & P.W.2 were not cross examined by the accused. Hence, considering the principles of natural justice, this Court inclined to give an opportunity to the petitioner to cross examine the P.W.1 and P.W.2 on condition of payment of Rs.5,000/- to the witnesses and this Court passed the following order in the admission stage itself.

4.Accordingly, the order passed by the learned Judicial Magistrate No.I, Kuzhithurai, in Crl.M.P.No.9274 of 2018 in S.T.C.No.876 of 2010 on his file dated 09.01.2019, is set aside and the learned Judicial Magistrate is directed to fix the date for cross examination of P.W.1 and P.W.2 without any further delay. The petitioner shall cross examine the P.W.1 and P.W.2 on the same day itself. The petitioner shall pay a sum of Rs.2,500/- to the P.W.1 and P.W.2 each.

5.With the above direction, this criminal original petition is allowed.

Sd/-

Assistant Registrar(Crl.Side)

// True Copy //

Sub Assistant Registrar(CS)

To

The Judicial Magistrate No.I,
Kuzhithurai.

+1 CC to M/s.S.SIVAKUMAR, Advocate in SR-54714

Crl.O.P. (MD)No.4017 of 2019
18.03.2019

tm