



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE N. SESHASAYEE

CrI.O.P. [MD] No. 4542 of 2019

and

CrI.M.P. [MD] No. 2790 of 2019

K.P.D.Akilan : Petitioner/Petitioner/Accused

/Vs./

PR.P.Velappan : Respondent/Respondent/Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the entire records relating to the impugned order passed by the learned Judicial Magistrate No.II, Kumbakonam made in Cr.M.P.No.9213 of 2018 in S.T.C.No.1722 of 2015 on the file of the learned Judicial Magistrate No.II, Kumbakonam and set aside the same by allowing the present original petition.

For Petitioner : Mr.A.Saravanan

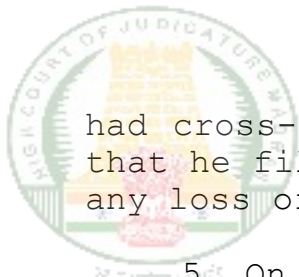
ORDER

This petition is filed for recalling the respondent / complainant, P.W.1 in S.T.C.No.1722 of 2015, which is now under trial for the offence under Section 138 of the Negotiable Instruments Act.

2. Heard the learned counsel appearing for the petitioner.

3. The learned counsel for the petitioner submitted that the case was posted for cross-examination of P.W.1 on 30.01.2018, on which date, a new counsel entered appearance for the petitioner / accused in this case and to the extent, he had received instructions that petitioner / accused had cross-examined P.W.1. Then, it is in the circumstances he came out with a petition in Cr.M.P.No.9213 of 2018 for recalling P.W.1 to cross-examine P.W.1 on certain specific aspects. This petition was filed on 07.08.2018, wherein it is *interalia* alleged that when the petitioner sought some time for continuing his cross-examination on 30.01.2018, the same was denied and the evidence was closed.

4. The learned counsel appearing for the petitioner further submitted that the new counsel had entered appearance on 30.01.2018, since he did not want to take time to cross-examine P.W.1, he, to the extent he had received instructions that petitioner / accused,



had cross-examined P.W.1, it needs to be concluded. He also added that he filed a petition for recalling the witness was filed without any loss of time.

5. On perusing the order, this Court finds that the trial Court appears to have been annoyed by the statement in the petition that the Court had denied the petitioner time for further cross-examination.

6. Without going into the merits of the same, since a new Advocate has entered appearance only on 30.01.2018, it might have been appropriate that he is shown some indulgence in the matter to complete the cross-examination. Therefore, this Court considers it appropriate to recall P.W.1 and direct the petitioner to cross-examine on the same day. But, it may not happen without the petitioner paying some costs to the respondent as it would have caused some inconvenience to him.

7. In conclusion, the order passed by the learned Judicial Magistrate No.II, Kumbakonam made in Cr.M.P.No.9213 of 2018 in S.T.C.No.1722 of 2015 on the file of the learned Judicial Magistrate No.II, Kumbakonam is set aside. Accordingly, this criminal original petition is allowed. P.W.1 is recalled on the petitioner paying a cost of Rs.2,000/- [Rupees Two Thousand only] to the respondent on the date on which the case is posted or such other day the trial Court may fix, upon payment of which, the trial Court may prompt the petitioner to cross-examine P.W.1. The entire exercise shall be completed on the same day. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Crl.Side)

// True Copy //

Sub Assistant Registrar(CS)

To

The Judicial Magistrate No.II,
Kumbakonam.

+1 CC to M/s.A.SARAVANAN, Advocate in SR-56976

Crl.O.P.[MD]No.4542 of 2019

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PK/02.05.2019 : 2P/3C