



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.04.2019

CORAM:

THE HONOURABLE **MR. JUSTICE N. SESHASAYEE**

Crl.O.P. (MD)No.4935 of 2019

and

Crl.M.P. (MD)No.3086 of 2019

U.Andrews ... Petitioner / Petitioner / Accused

/Vs./

P.J.S.B.Jose

(Power of Attorney Holder)

Representing

L.Pragash Leo

... Respondent / Respondent /
Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C to set aside the order dated 14.03.2019 in Crl.M.P.No.153 of 2019 in S.T.C.No.928 of 2018 on the file of the learned Judicial Magistrate, Fast Track Court, Nagercoil and direct the Court below to recall P.W.1 for cross-examination.

For Petitioner : Mr.C.T.Perumal

ORDER

This Criminal Original Petition is filed for setting aside the order dismissing the petitioner's prayer for recalling P.W.1 under Section 311 Cr.P.C.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor.

3. The respondent has preferred a complaint under Section 138 of the Negotiable Instruments Act and going by the text of the impugned order, he was examined in chief on 15.02.2012, thereafter, the petitioner took three adjournments till 18.05.2012, and as he did not cross examine the respondent on 18.05.2012, the evidence of the petitioner was closed and the case was posted for questioning the petitioner under Section 313 Cr.P.C. Thereafter, between 24.05.2012 and 24.11.2012, the petitioner is said to have paid a sum of Rs.50,000/- to the respondent, but, thereafter, for the next 86 adjournments, the petitioner had neither paid any money nor came out with any application to cross examine P.W.1. When he ultimately chose to file a petition under Section 311 Cr.P.C in 2018, it was too late, and the trial Court, by a considered order, has dismissed the same.

4. The learned counsel appearing for the petitioner made a fervent plea that atleast one opportunity might be given to the



petitioner to cross examine P.W.1 as his substantial right of the defence may still require consideration in law. He however, conceded that there has been inordinate delay but this delay can always compensated in terms of costs.

5. The delay is not the matter that concerns this Court immediately, nor the ability of the petitioner to pay cost is of no significance. What stands out here is the attitude of the petitioner in participating in the criminal trial. This attitude appears to sabotage the criminal trial. Substantial justice should be done not only for the accused but also to the complainant / respondent equally.

6. This Court is not satisfied with the plea of the learned counsel appearing for the petitioner, nor it finds any flaw in the order of the learned Magistrate. This Criminal Original Petition is devoid of merits and accordingly, it is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To
The Judicial Magistrate, Fast Track Court, Nagercoil.

+1cc to Mr.c.T.Perumal, Advocate, SR.No.58384

Crl.O.P.(MD)No.4935 of 2019

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KK/SAR/13.05.2019/ 2P- 3C