



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 22.04.2019
CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Cr1.O.P(MD)No.5746 of 2019

Devabalan

... Petitioner

Vs.

S.Kanagaraj

... Respondent

Prayer : This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records relating to the order passed by the learned Judicial Magistrate/Fast Track Court -I, Madurai, in Cr.M.P.No.7140 of 2018 in S.T.C.No.505 of 2015 dated 14.03.2019 and set aside the same and allow the petitioner to recall the witness -PW1/complainant for cross examination.

For Petitioner : Mr.Mark J Jackson

O R D E R

This Criminal Original Petition has been filed to call for the records relating to the order passed by the learned Judicial Magistrate/Fast Track Court -I, Madurai, in Cr.M.P.No.7140 of 2018 in S.T.C.No.505 of 2015 dated 14.03.2019 and set aside the same and allow the petitioner to recall the witness -PW1/complainant for cross examination.

2.Heard Mr.Mark J Jackson, learned counsel appearing for the petitioner.

3.The petitioner herein is the accused in a complaint instituted by the respondent under Section 138 of Negotiable Instruments Act. When the matter was posted for arguments before the trial Court, the petitioner filed a recall petition in Cr.M.P.No.7140 of 2018, to recall the witness-P.W.1, for cross-examination and the said petition was allowed by the trial Court, on condition that the petitioner should pay a sum of Rs.1,500/- to the respondent on or before 10.10.2018. However, the petitioner has not complied with the said conditional order and hence, the said petition was dismissed for non-compliance of the above said conditional order. Thereafter, the petitioner filed the present petition to condone his mistake for non-compliance of the conditional order and permit him to cross examine the witness-P.W.1.



4.The trial Court has dismissed the said petition on the ground that the petitioner did not take steps to comply the condition imposed on him in Cr.M.P.No.3988 of 2018, dated 14.03.2019. Against the dismissal order, the petitioner filed the present Criminal Original Petition before this Court.

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5.The learned counsel appearing for the petitioner would submit that though the petitioner has ready to pay cost to the respondent, the respondent refused to receive the cost of Rs.1500/-. Hence, the petitioner could not comply with the conditional order and could not cross examine the witness-P.W.1. Hence, he prayed for recalling the Witness-P.W.1, for cross examination.

6.Considering the facts and circumstances of the case, issuing notice to the respondent is un-necessary, since already the trial Court allowed the petition under Section 311 of the Code of Criminal Procedure on payment of Rs.1,500/- and the said conditional order has not been complied with by the petitioner. However, the petitioner is agreed before this Court, to pay a sum of Rs.4,000/-as witness cost to P.W.1.

7.In view of the above, by allowing this petition, no prejudice would be caused to the respondent, without ordering notice to the respondent in this petition and therefore, I am inclined to allow the petition to recall the witness-P.W.1, for cross examination.

8.Accordingly, this Criminal Original Petition is allowed on payment of Rs.4,000/- as costs to be paid by the petitioner to the respondent/P.W.1. The order dated 14.03.2019, passed in Cr.M.P.No.7140 of 2018 in S.T.C.No.505 of 2015, by the learned Judicial Magistrate/Fast Track Court No.I, Madurai, is set aside. The Trial Court is directed to recall P.W.1, fixing the date for his cross-examination. On his appearance before the Court, the petitioner shall pay a sum of Rs.4,000/- directly to P.W.1, as witness costs. The Trial Court after ensuring such payment, shall permit the petitioner to cross-examine P.W.1 and the petitioner is also directed to complete his cross-examination on the same day.

Sd/-

Assistant Registrar (AD-I)

/ True Copy /



To

The Judicial Magistrate/Fast Track Court -I ,
Madurai.

+1 CC to M/s.MARK J JACKSON, Advocate

(SR-61648[F] dated 22/04/2019)

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ES/14.05.2019/3P/3C