



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.09.2019

CORAM

THE HONOURABLE MR.JUSTICE **G.K. ILANTHIRAIYAN**

CRL.O.P. (MD) .No.11410 of 2019

and

CRL.M.P (MD) No.7149 of 2019

WEB COPY

Alusia Rodrigo

... Petitioner/Petitioner/
Sole Accused

Vs.

Xavier Fernando

... Respondent/Respondent/
Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to set aside the order made in Cr.M.P.No.3847 of 2019 in C.C.No.160 of 2011 on the file of the Judicial Magistrate, Thiruchendur, dated 29.07.2019.

For Petitioner : Mr.G.Kannan

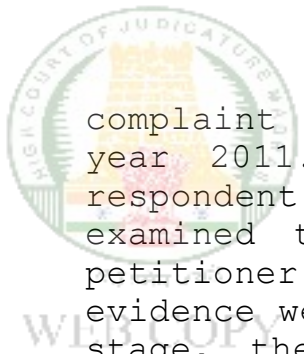
For Respondent : Mr.C.Arul Vadivel @ Sekar

ORDER

The Criminal Original Petition has been filed challenging the order passed in Cr.M.P.No.3847 of 2019 in C.C.No.160 of 2011, dated 29.07.2019, thereby dismissing the application filed by the petitioner under Section 311 of Cr.P.C to examine the wife of the defacto complainant as his witness.

2.The learned counsel for the petitioner would submit that the petitioner is an accused. The respondent initiated the proceedings under Section 138 of Negotiable Instruments Act. The defacto complainant was examined as P.W.1 and on the petitioner side examined two witnesses were examined as D.W.1 and D.W.2. He wants to examine the wife of the defacto complainant as his defence witness. Already he filed a petition and it was allowed to examine the wife of the defacto complainant. On the date of her appearance, the petitioner could not able to examine the wife of the defacto complainant for personal inconvenience. Therefore, he filed a petition to re-call the wife of the defacto complainant and the same was dismissed by the learned Judicial Magistrate, Thiruchendur, on 29.07.2019.

3.The learned counsel for the respondent/defacto complainant submitted that the respondent initiated the proceedings under Section 138 of Negotiable Instruments Act as against the petitioner. The allegation is that the petitioner borrowed a sum of Rs.5,00,000/- and towards discharge of liability, he issued cheque and the same was returned for the reason that 'funds insufficient'. After issuance of notice, he proceed with the



complaint under Section 138 of Negotiable Instruments Act in the year 2011. In fact after completion of P.W.1's witness, the respondent examined D.W.1 and D.W.2. on his side. He has also examined the wife of the respondent in the witness box, the petitioner failed to examine her. Therefore, now both side evidence were closed and the case is posted for arguments. At this stage, the petitioner has filed this petition to re-call the witness/wife of the defacto complainant for examination on his side.

4.The petitioner is an accused. The respondent has initiated the proceedings under Section 138 of Negotiable Instruments Act. The case is of the year 2011. On the side of the respondent, he has examined D.W.1 and D.W.2.

5.It is also seen that the petitioner has also examined the wife of the defacto complainant and even then he could not examined her. Thereafter, when the matter was posted for arguments, the petitioner come forward with this petition again to examine the wife of the defacto complainant as his defence witness.

6.Taking note of the facts and circumstances, the trial Court has rightly dismissed the petition, since the petition has been filed only to drag the proceeding. This Court does not find any illegality or infirmity in the order passed by the lower Court. Hence, this Criminal Original Petition is dismissed.

7.However, the case is of the year 2011, the learned Judicial Magistrate, Thiruchendur, is directed to complete the trial within a period of eight (08) weeks form the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (w)

// True Copy //

Sub Assistant Registrar(CS)

das
To
The Judicial Magistrate,
Thiruchendur.

+1 CC to M/s.C.ARUL VADIVEL @ SEKAR, Advocate (SR-90387[F] dated 30/09/2019)

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