



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.09.2019

WEB COPY

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD)No.17932 of 2017

and

Crl.M.P.(MD)No.11712 of 2017

M.Boominathan

... Petitioner/Petitioner/Accused

Vs.

A.Mohammed Basheer

... Respondent/Respondent/Complainant

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in connection with the Crl.R.C.No.36 of 2017 on the file of Additional District Sessions Court (Fast Track Court) Kumbakonam, in Crl.M.P.No.8070 of 2017 S.T.C.No.4564 of 2009 on the file of Judicial Magistrate Court, Kumbakonam, and to set aside the same and permit the petitioner to cross examine the complainant witnesses-I.

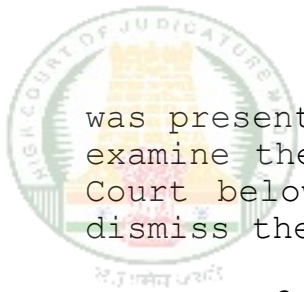
For Petitioner : Mr.S.C.Herold Singh

For Respondent : No appearance

ORDER

The present Criminal Original Petition has been filed challenging the order passed by the Court below dismissing an application filed under Section 311 Cr.P.C., to recall and cross-examine P.W.1.

2.The petitioner is facing trial before the Court below for the offence under Section 138 of the Negotiable Instruments Act. The case is at the stage of trial. The complainant examined himself as P.W.1 on 24.07.2011, he was not cross-examined and therefore, his evidence was closed. The petitioner filed an application under Section 311 of Cr.P.C. and the same was allowed by an order dated 03.01.2017. Thereafter, the cross-examination did not take place either because the petitioner was not ready or the defacto complainant was not present before the Court. Ultimately, when the matter came up for hearing on 27.06.2017, the defacto complainant



was present before the Court below and the petitioner did not cross-examine the defacto complainant and sought for an adjournment. The Court below rejected the request for adjournment and proceeded to dismiss the application filed under Section 311 of Cr.P.C.

3.The learned counsel for the petitioner submitted that atleast on two occasions, the defacto complainant was not present and the same has been recorded by the Court below in the order. The learned counsel further submitted that one last opportunity can be given to the petitioner to cross-examine P.W.1 and the petitioner will not drag on the proceedings any more.

4.The respondent has been served with notice and his name has also been printed in the cause list. However, there is no representation for the respondent.

5.Taking into consideration the facts and circumstances of the case and also the fact that one last opportunity can be given to the petitioner, the order passed by the Court below in Crl.M.P.No.8070 of 2017, dated 24.07.2017 is hereby set aside. The defacto complainant shall be present before the Court below on 01.10.2019 and on the same day, he shall be cross-examined by the petitioner and the cross-examination shall be completed on the same day. If for any reasons, the petitioner fails to cross examine the defacto complainant on the date of his appearance, the petitioner shall forfeit his right to recall the defacto complainant in future. The petitioner shall pay a sum of Rs.2,500/- (Rupees Two Thousand Five Hundred only) to the defacto complainant on the day of his appearance before the Court below.

6.In the result, this Criminal Original Petition is allowed and the Court below is directed to complete the proceedings in S.T.C.No.4564 of 2009 within a period of one month from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Judicial Magistrate,
Kumbakonam.



Ls
JMN (20.09.2019) 3P : 3C