

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2020

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.3606 of 2020
and
Crl.M.P.Nos.2100 & 2101 of 2020

Amsaveni

...Petitioner

-Vs-

Loganathan

... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in C.C.No.520 of 2018 on the file of the learned Judicial Magistrate No.I, FTC at Magisterial level, Coimbatore to set aside the order dated 09.12.2019 passed in Crl.M.P.No.4218 of 2019 and direct the learned Magistrate to permit the petitioner to examine the 9 witnesses cited as defence witnesses.

For Petitioner : Mr.A.M.Rahamath Ali

ORDER

This Criminal Original Petition has been filed by the accused to set aside the order passed by the learned Judicial Magistrate No.I, Fast Track Court at Magisterial level, Coimbatore passed in Crl.M.P.No.4218 of 2019 in C.C.No.520 of 2018 dated 09.12.2019.

2. The learned counsel for the petitioner has submitted that the petitioner is facing trial for the alleged offence under section 138 of the Negotiable Instruments Act. He further submitted that at the time of questioning the petitioner/accused under section 313 Crpc, the petitioner has stated that she would examine one witness Mrs.Kokila as D.W.1., but subsequently she felt that some more witnesses also to be examined on her side and hence she filed a list of witnesses on 09.12.2019 seeking permission of the trial court to permit her to examine the aforesaid witnesses on her side. He further submitted that the learned trial court has simply rejected the said list by saying that the petitioner has not mentioned the name of the aforesaid witnesses at the time of questioning under section 313 Crpc. He further submitted that as per section 254(2) of Cr.P.C., there is no bar for the

accused to file such a list even after examining the accused under section 313 Cr.P.C. He further submitted that in the said list, the petitioner has cited 9 witnesses and the said witnesses are material witnesses and unless the petitioner is permitted to examine the said witnesses, she cannot establish her defence and therefore, he prayed to set aside the order passed by the trial court in CrI.M.P.No.4218 of 2019 dated 09.12.2019 and give an opportunity to the petitioner to examine the aforesaid witnesses on her side.

3. Since the case before the trial court has already reached the stage of defence side evidence, in order to avoid further delay, the notice to the respondent is dispensed with.

4. This Court of the view that merely because accused has not given a list of witnesses at the time of questioning under section 313 Cr.P.C., that will not preclude the accused from filing any application under section 254(2) Cr.P.C., for issuing summons to any of the witnesses. But in this case, she has not stated any reason for what purpose she wants to examine the said witnesses. Further, she has not made any request in the said list to issue summons to the witnesses. The learned Judicial Magistrate has not rejected the said list on the ground that the petitioner has not stated any reason for summoning the said witnesses. On the contrary, he has simply rejected the said list by saying that the petitioner has not mentioned the name of the said witnesses at the time of questioning under section 313 Crpc. Hence, the said order is liable to be set aside.

5. In the result, the order passed by the learned Judicial Magistrate in CrI.M.P.No.4218 of 2019 dated 19.12.2019 is set aside. But, merely because the said order is set aside, the petitioner cannot be allowed to examine the witnesses mentioned by her in the list. She has to file an application under Section 254(2) of Cr.P.C., mentioning the reasons for what purpose she wants to examine the said witnesses, within a week from the date of receipt of copy of this order. If any such application is filed, the learned Judicial Magistrate has to dispose of the said application in accordance with law.

6. With the aforesaid directions, this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

mfa

To

The Judicial Magistrate No.I,
FTC at Magisterial level,
Coimbatore.

+1cc to Mr.H.Rajasekar, Advocate SR.14575

CrI.O.P.No.3606 of 2020

and

CrI.M.P.Nos.2100 & 2101 of 2020

AD(CO)
CB(21/02/2020)



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