

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.08.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

Crl.OP.No.8307 of 2019

and

Crl.M.P.No.4448 of 2019

N.D.Mani

...

petitioner/Accused

Vs.

N.Rajesh

...

Respondent/Complainant

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C. to set aside the order dated 19.03.2019 passed in Crl.M.P.No.382 of 2019 in C.C.No.1890 of 2016 by the Learned Metropolitan Magistrate, Fast Track Court-IV, George Town, Chennai.

For Petitioner : Mr.Sivamohan C.P.

For Respondent : Mr.S.Saranraj

ORDER

The Criminal Original Petition is directed against the order dated 19.03.2019 passed in Crl.M.P.No.382 of 2019 in C.C.No.1890 of 2016 on the file of the Metropolitan Magistrate, Fast Track Court-IV, George Town, Chennai.

2.The petitioner/accused is facing the criminal prosecution under Section 138 of the Negotiable Instruments Act in C.C.No.1890 of 2016 on the file of the Metropolitan Magistrate, Fast Track Court-IV, George Town, Chennai - 1.

3.From the materials available on record, it is found that the respondent/complainant has tendered evidence as PW1 as early as on 03.01.2017 and thereafter, the matter stood adjourned for the cross examination of PW1 on various dates viz., 23.01.2017, 13.02.2017 and 27.02.2017. Despite the indulgence of the Court concerned, granting ample opportunities to the petitioner/accused to cross examine PW1, inasmuch as the petitioner/accused has failed to avail the opportunities granted to him, it is found that the Court has closed the evidence of PW1 on 27.02.2017 and posted the matter for further proceedings. It is further found that the petitioner/accused was questioned on 22.03.2017 under Section

313 Cr.P.C and thereafter, the case stood adjourned for the evidence of the petitioner/accused on several dates. At that stage of the matter, it is found that the Court below had been informed that the matter had been stayed by this Court in criminal O.P.No.7637 of 2017, which O.P. has been preferred by the petitioner/accused for quashing the case relating to C.C.No.1890 of 2016 on the file of the Metropolitan Magistrate, Fast Track Court-IV, George Town, Chennai - 1.

4. From the records available, it is found that in the abovesaid criminal original petition, interim stay has been granted till 21.06.2017. Thereafter, it is found that the abovesaid criminal O.P. has been finally disposed of on 07.06.2018. Subsequent thereto, inasmuch as the petitioner/accused has failed to continue the proceedings before the Court below, NBW has been issued against him and thereafter, the matter stood adjourned as mentioned earlier for DWs. It is further noted that the petitioner/accused has also preferred the petition under Section 315 Cr.P.C to tender his evidence. When the matter stood adjourned for his evidence as Last Chance, at that stage of the matter, it is found that the petitioner has come forward with the petition under Section 311 Cr.P.C seeking permission to recall PW1 for cross examination.

5. The abovesaid petition preferred by the petitioner/accused in CrI.M.P.No.382 of 2019 was stoutly resisted by the respondent/complainant contending that the abovesaid petition has been preferred by the petitioner / accused only to prolong the proceedings with a view to drag on the matter endlessly and deprive the respondent/complainant from releasing the cheque amount and accordingly, prayed for dismissal of the petition.

6. The Court below, on an appreciation of the contentions put forth by the respective parties, deemed it fit to dismiss the petition preferred by the petitioner to recall PW1. Impugning the same, the present criminal original petition has been laid under Section 482 of CrI.P.C.

7. As noted supra, even before the stay order had been granted by this Court in CrI.O.P.No.7637 of 2017, it is found that the evidence of PW1 has been closed on 27.02.2017 on account of the failure of the petitioner/accused to cross examine him, despite ample opportunities provided to the petitioner /accused for the cross examination of PW1. As abovenoted, the matter then stood adjourned for further proceedings and finally posted for the evidence of DWs. At that stage of the matter only, it is found that the petitioner has come forward with the petition under Section 311 Cr.P.C to recall PW1. When to the knowledge of the petitioner, the matter stood adjourned for the cross examination of PW1 on

various dates as above mentioned, the petitioner should have availed the said opportunities and proceeded to cross examine PW1 at the earliest point of time. However, the petitioner, for the reasons best known to him, has failed to avail the said opportunities and been prolonging the matter one way or the other and in such circumstances, it is found that the Court below had rightly closed the evidence of PW1 and posted the matter for further proceedings. In such view of the matter, it is found that when the matter stood adjourned for the examination of DWs on the side of the petitioner/accused, the action initiated by the petitioner/accused to recall PW1 is found to be highly belated and without any basis. It has not been explained by the petitioner/accused as to why he had not endeavoured to cross examine PW1 on the hearing dates, when the matter stood adjourned for his cross examination. In such view of the matter, as rightly held by the Court below, very belatedly, more so, when it is noted that CrI.O.P.No.7637 of 207 has been disposed of on 07.06.2018 itself, very belatedly thereafter also, the petitioner has come forward with the petition to recall PW1 and considering the abovesaid factors, the Court below had rightly held that the petition has been preferred nearly two years after the closure of PW1's evidence and 9 months after the disposal of quash petition by the High Court and in such view of the matter, when with reference to the abovesaid delay, as the petitioner had not furnished any valid cause as to why he had not endeavoured to recall PW1 at the earliest point of time, particularly, at the stages, when the Court had granted opportunities to him to cross-examine PW1, in such view of the matter, the Court below has rightly held that the recall petition cannot be entertained in a routine manner and particularly, without the petitioner projecting any strong reason for the recall of PW1 at the belated stage, the attitude of the petitioner seems to be that he would be entitled to recall the witness at any point of time as he desires and this attitude is of the petitioner is highly deprecated and in such view of the matter, as held by the Court below, when the recall of the witness already examined is not a matter of course and the discretion to recall should be exercised judiciously and not arbitrarily and in toto, when the petitioner has failed to adduce a valid cause for the recall of PW1 belatedly, as rightly held by the Court below, the aim and intention of the petitioner is only to prolong the proceedings endlessly so as to cause serious hardship and prejudice to the respondent/complainant.

8. In the light of the forgoing reasons, I do not find any valid reason to disturb the impugned order passed by the Court below. The Court below has rightly considered the merits of the case in the correct perspective, both factually as well as legally and rightly dismissed the petition preferred by the petitioner to recall PW1. For the reasons aforestated, the

criminal original petition is dismissed. Consequently,
connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

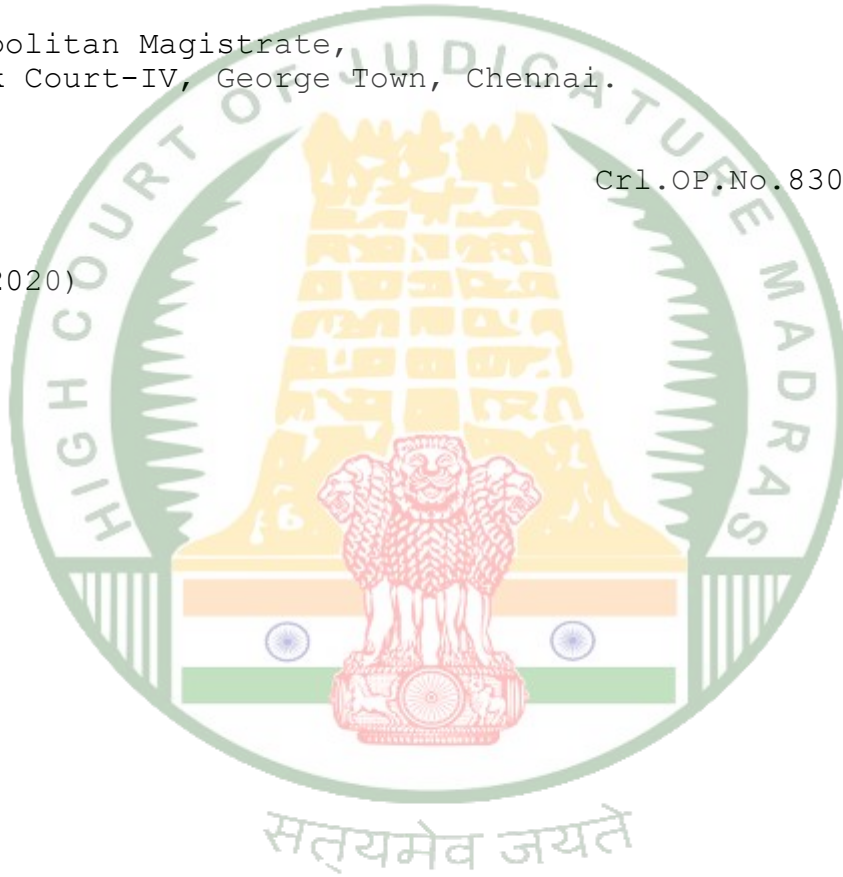
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To

The Metropolitan Magistrate,
Fast Track Court-IV, George Town, Chennai.

CrI.OP.No.8307 of 2019

NMI (CO)
CB(07/10/2020)



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