

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2020

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

Crl OP.No.18252 of 2020

R. Manish Hathiramani

S/o. Ramesh Hathiramani

...Petitioner

Vs.

G.D.Ranka

...Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.PC praying to set aside the order dated 30.09.2020 in CMP No.752 of 2019 in CC No.1543 of 2013 passed by the Fast Track Court III, Metropolitan Magistrate, Saidapet, rejecting the petition filed under Section 311 of the Criminal Procedure Code to reopen/recall the witness P.W.1 and permit the petitioner to further cross examine P.W.1 and pass any other order/orders as this Hon'ble court may deem fit.

For Petitioner

: Mr. Praveen Alexander

ORDER

Assailing the order dated 30.09.2020 passed in CMP No.752 of 2019 in CC No.1543 of 2013 on the file of the Fast Track Court III, Metropolitan Magistrate, Saidapet, Chennai, the present Criminal Original Petition has been preferred by the petitioner/accused.

2. The petitioner/accused is facing criminal prosecution under Section 138 of the Negotiable Instruments Act. The respondent is the complainant. From the materials place on record, it is found that the complainant/P.W.1 had been examined in chief on 05.07.2017 and thereafter, extensively cross examined on 30.08.2017, 23.10.2017, 23.11.2017 and 11.01.2018 and after the closure of the complainant's case, the defence evidence of the petitioner/accused was commenced and the petitioner/accused has examined himself as D.W.1 and Exs.D1 to D7 had been marked and further examined D.W.2 and thereafter the defence evidence was closed on 07.09.2019 and the matter then

stood adjourned for arguments on 30.09.2019. On that date, the petitioner/accused preferred a petition to compare the signature found in the cheque by an expert and the same was rejected by the Court inasmuch as similar application for the same relief had already been dismissed and the abovesaid order had also been confirmed by the High Court. Thereafter, the matter stood adjourned for arguments on 04.11.2019. On that date, the petition has been preferred by the petitioner in CMP No.752/2019 for recalling P.W.1 for further cross examination.

3. On three main grounds, the petition has been preferred by the petitioner to recall P.W.1, namely, with reference to the averments put forth in the Proof Affidavit as regards the lodging of the false complaint by the accused on the ground that the complainant had stolen the cheque, the solvency of the complainant in lending a sum of Rs.4,02,93,000/- and with reference to the contradictions deposed in the Proof Affidavit regarding the manner in which the loan amount had been furnished to the accused. The abovesaid petition has been resisted by the complainant contending that, only with a sole aim of procrastinating the proceedings endlessly, the petition has been preferred by the petitioner without any basis and particularly, when the complainant/P.W.1 had already been extensively cross examined, the present petition has been preferred only to cause immense loss and hardship to the complainant, who is 70 years old and therefore, sought for dismissal of the petition.

4. The court below, on an appreciation of the rival contentions put forth by the respective parties, directed the dismissal of the petition preferred by the petitioner/accused. Challenging the same, this Criminal Original Petition has been preferred.

5. Considering the materials placed on record and the impugned order, as rightly held by the court below, when the petitioner/accused, through his evidence, had already marked the documents pertaining to the complaint preferred by him as defence exhibits and also sufficiently cross examined P.W.1 with reference to the same and when the same had been disputed by the complainant, as rightly held by the court below, the contention of the petitioner that the complainant/P.W.1 is required to be further cross examined with reference to his averments in the Proof Affidavit pertaining to the lodging of the false complaint, as such, cannot be accepted.

6. As regards the alleged contradictions said to have been made in the Proof Affidavit of the complainant qua the lending of the loan amount, as rightly considered by the court below, when the complainant has given clear particulars regarding the lending of the loan amount based on the confidence developed with the accused, in such view of the matter, as rightly held by

the court below, the alleged contradictions made in the Proof Affidavit of the complainant with reference to the lending of the loan amount, as such, do not merit acceptance for the purpose of recalling P.W.1 for further cross examination, as with reference to the said aspect, P.W.1 had already been cross examined extensively.

7. As regards the solvency of the complainant to lend the loan amount, as rightly determined by the trial court, P.W.1 had already been cross examined with reference to the said aspect and considering the evidence of P.W.1, as extracted in the impugned order, it is clear that the aspect of solvency of the complainant had been put to P.W.1 during the cross examination by the petitioner/accused and in such view of the matter, as rightly concluded by the court below, for that purpose, P.W.1 need not be recalled for further cross examination.

8. In the light of the abovesaid factors, when the court below had furnished cogent and proper reasonings for rejecting the petition preferred by the petitioner under Section 311 of Cr.P.C for recalling P.W.1 for further cross examination and when it is noted that P.W.1 had already been vastly cross examined by the petitioner on all the aspects, as held by the court below, the present petition preferred by the petitioner is only intended to delay the proceedings endlessly and when it is seen that the case is pending from the year 2013 and further when it is noted that the complainant is an aged person, in such view of the matter, the petitioner, instead of cooperating with the progress of the case in the right direction, has levied the frivolous petition for dragging the proceedings, which cannot be countenanced.

9. In the light of the abovesaid factors, I do not find any error or infirmity in the impugned order. Resultantly, the Criminal Original Petition is dismissed.

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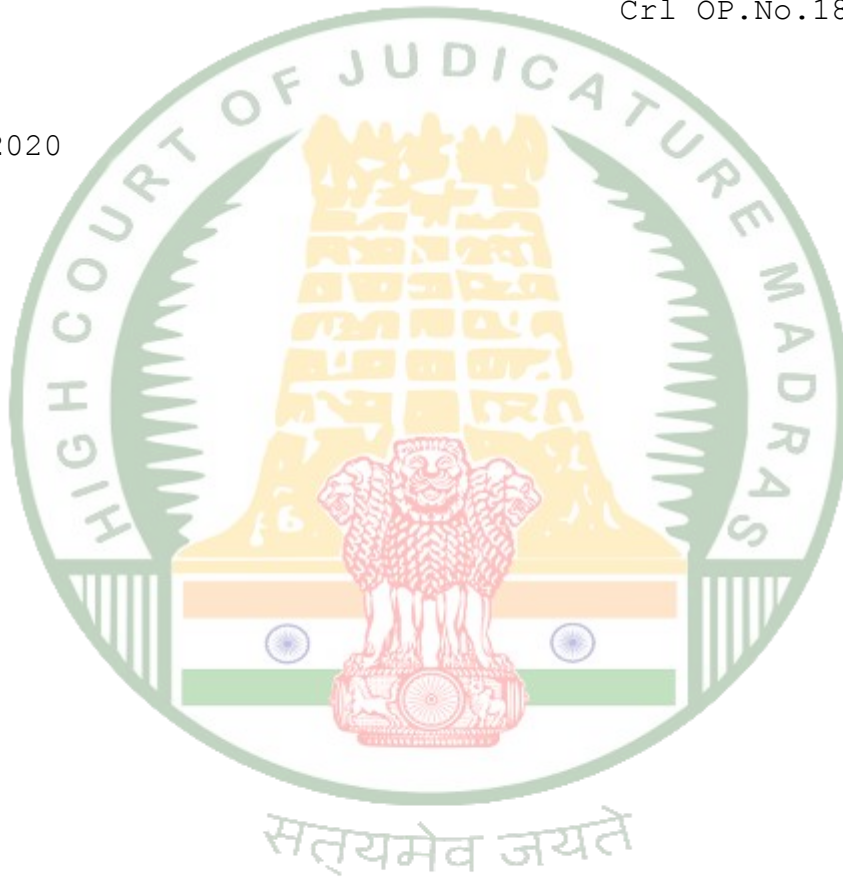
To

1. The Metropolitan Magistrate,
Fast rack Court No.III,
Saidapet, Chennai.

+1 CC to Mr. Praveen Alexander Advocate Sr.No.37313

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SPD(CO)
cs 19/12/2020



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