



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.01.2020

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.O.P(MD) No.19076 of 2019

and

CRL.M.P. (MD) .No.11198 of 2019

J.H.Raja

... Petitioner/Accused

Vs.

Eagle Foods,
Represented by R.Muthumani,
No.91, TN-Food Grants Marketting Yard,
Sikkender Chavadi,
Madurai-18.

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records of the learned Judicial Magistrate No.II, Fast Track Court (Magistrate Level), Madurai in Cr.M.P.No.5433 of 2019 in S.T.C.No.265 of 2018 and set aside the order dated 28.11.2019.

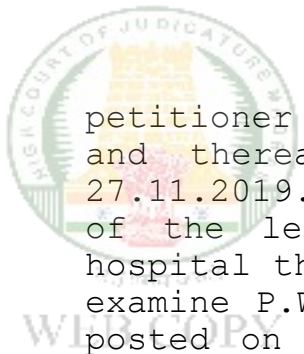
(Amended as per order of this Court dated 20.12.2019 in CrI.MP(MD) No.11367/2019 in CrI.OP(MD) No.19076 of 2019)

For Petitioner : Mr.S.Mahendrapathy

O R D E R

This Criminal Original Petition has been filed to set aside the order dated 28.11.2019 in Cr.M.P.No.5433 of 2019 in S.T.C.No.265 of 2018 passed by the learned Judicial Magistrate No.II, Fast Track Court (Magistrate Level), Madurai.

2.The learned counsel appearing for the petitioner would submit that the petitioner is an accused in S.T.C.No.265 of 2018 pending on the file of the Judicial Magistrate No.II, Fast Track Court (Magistrate Level), Madurai for the offence under Section 138 of Negotiable Instrument Act. He would further submit that the petitioner had filed Cr.M.P.No.5433 of 2019 to recall P.W.1 for further cross examination and the petition was allowed on 28.11.2019 subject to the petitioner to pay a cost of Rs.500 to the respondent directly on or before 20.11.2019. He would further submit that the



petitioner had paid a cost of Rs.500/- to the respondent/complainant and thereafter the case was posted for cross examination on 27.11.2019. He would further submit that on 27.11.2019 the brother of the learned counsel for the petitioner was admitted in the hospital thereby, the counsel for the petitioner was unable to cross examine P.W.1/ respondent/complainant and thereafter the matter was posted on 28.11.2019. since the counsel's brother passed away on 28.11.2019, he was unable to appear before the trial Court and the learned Judicial magistrate had closed the cross examination and adjourned the matter to 05.12.2019 for arguments. He would further submit that the failure to cross examine the P.W.1/respondent/complainant on 28.11.2019 is neither wilful nor wanton. He would further submit that there is presumption against the accused in the Negotiable Instrument Act and if the petitioner is not given chance to cross examine the P.W.1/respondent/complainant, serious prejudice will be caused to the petitioner. He would further submit that now the case stands posted to 10.01.2020 and would pray that the petitioner will cross examine P.W.1 on the same day and the petitioner may be allowed on payment of cost and on imposition of condition and that the petitioner will cooperate for further progress of the trial without any further delay.

3.It is seen that the Court had passed an order directing for recalling P.W.1 for further cross examination. However, due to death of the brother of the counsel for the petitioner, he was unable to cross examine the P.W.1/respondent/complainant on 27.11.2019.

4.This Court is of the opinion that one last chance may be given to the petitioner to cross examine the P.W.1/respondent/complainant on the next hearing date or any other immediate dated fixed by the trial Court. In view of the same, the order dated 28.11.2019 in Cr.M.P.No.5433 of 2019 in S.T.C.No.265 of 2018 is set aside and the petitioner's counsel is permitted to cross examine the P.W.1 / respondent / complainant on 10.01.2020 or any other date fixed by the trial Court subject to the following condition:

(i)the petitioner shall pay a cost of Rs.5,000/- out of which Rs.2,500/- shall be paid as cost to the respondent and Rs.2,500/- shall be paid to the Taluk Legal Services Authority.

(ii)the petitioner shall file an affidavit of undertaking that he will cross examine the P.W.1/respondent/complainant on 10.01.2020 or any other date fixed by the trial Court without fail.

(iii)if the petitioner fails to cross-examine the P.W.1/respondent/complainant on 10.01.2020 or any other date fixed by the trial Court, the petitioner shall loose his further chance



hearing arguments and pass orders in accordance with law.

5.In the result, this criminal Original Petition is allowed.
Consequently, the connected Crl.M.P.(MD).No.11198 of 2019 is closed.

WEB COPY

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

The Judicial Magistrate No.II,
Fast Track Court (Magistrate Level),
Madurai.

+1 CC to M/s.S.MAHENDRAPATHY, Advocate (SR-399[F] dated 06/01/2020)

VSG

TE/SAR-IV : 07/01/2020 : 3P/3C

CRL.O.P(MD) No.19076 of 2019 and
CRL.M.P. (MD) .No.11198 of 2019
06.01.2020