

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2021

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.1055 of 2021
and
Crl.M.P.No.669 of 2021

T.Francis Nelson,
S/o.S.Thangamani.

... Petitioner

Vs.

N.Sivakumar Rajaprabhu,
S/o.Late P.Natarajan.

.... Respondent

Prayer: This Criminal Original Petition filed under Section 482 of Cr.P.C. to set aside the order made in C.M.P.No.1059 of 2020 in C.C.No.600 of 2016 pending on the file of the Fast Track (Judicial Magistrate Level) Court at Alandur and allow the CMP.No.1059 of 2020 in C.C.No.600 of 2016 pending on the file of the Fast Track (Judicial Magistrate Level) Court at Alandur by invoking the inherent jurisdiction under Section 482 Cr.P.C.

For Petitioner : Mr.M.Vijay Anand
For Respondent : Mr.Prakash Adiyapatham

ORDER

This petition has been filed challenging the order passed by the Court below dismissing the application filed under Section 311 Cr.P.C., to recall P.W.1 for cross examination.

2. The respondent filed a complaint against the petitioner for an offence under Section 138 of Negotiable Instruments Act. The respondent examined himself as P.W.1. He was not cross examined and hence his evidence was closed. The petitioner filed an application under Section 311 Cr.P.C., to recall P.W.1 for cross examination and this application was allowed by the Court below. Thereafter, the petitioner partially cross examined the respondent. The matter got adjourned for nearly 15 hearings and ultimately the Court below closed the evidence of P.W.1.

3. At this juncture, the petitioner filed yet another application under Section 311 Cr.P.C., in CMP.No.1059 of 2020 to

recall P.W.1 for cross examination and this application came to be dismissed by the Court below by an order dated 22.12.2020. Aggrieved by the same, the present petition has been filed before this Court.

4. Heard Mr.M.Vijay Anand, learned counsel appearing on behalf of the petitioner and Mr.Prakash Adiyapatham, learned counsel appearing on behalf of the respondent.

5. It is seen from records that the complaint is pending from the year 2016 onwards. The learned counsel for the respondent brought to the notice of this Court that the petitioner filed a quash petition on two occasions before this Court and both the petitions got dismissed. The first petition was filed in CrI.O.P.No.3007 of 2017 and the same was dismissed on 06.03.2017. The second petition was filed in CrI.O.P.No.5501 of 2017 and this petition was also dismissed by an order dated 17.03.2019. It is also seen from records that inspite of P.W.1 being recalled for cross examination, the petitioner failed to complete the cross examination for nearly two years. Therefore, the Court below was not inclined to entertain the subsequent application to recall P.W.1.

6. The learned counsel for the petitioner submitted that one last opportunity can be given to the petitioner to cross examine P.W.1 and if such cross examination is not conducted, the petitioner will not have any defence and he may have to face the consequences. The learned counsel further submitted that the petitioner is willing to comply any conditions as may be imposed by this Court.

7. Taking into consideration the facts and circumstances of the case, this Court does not find any illegality or infirmity in the order passed by the Court below. However, this Court is inclined to give one last opportunity to the petitioner to recall P.W.1 for cross examination by imposing stringent conditions. सत्यमेव जयते

8. In view of the above, this Criminal Original Petition is disposed of with the following directions:

(a) the petitioner is directed to deposit a sum of Rs.5,00,000/-(Rupees Five Lakhs only) on the file of the learned Judicial Magistrate, Fast Track Court at Alandur, in C.C.No.600 of 2016 on or before 23.02.2021.

(b) the Court below shall adjourn the case for hearing to 26.02.2021.

(c) on ascertaining the compliance of the condition imposed in clause (a), the petitioner shall be permitted to cross examine P.W.1 on 26.02.2021 and

the cross examination shall be completed on the same day.

(d) if the petitioner does not comply with the condition imposed by this Court in clause (a), the order passed by the Court below in CMP.No.1059 of 2020, dated 22.12.2020 shall stand revived and P.W.1 shall not be recalled for cross examination and

(e) the Court below shall complete the proceedings in C.C.No.600 of 2016 on or before 30.04.2021 and submit a compliance report before this Court.

Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To

- 1.The Judicial Magistrate
The Fast Track Court, Alandur.
- 2.The Section Officer
Criminal Section
High Court, Madras 104.
- 3.Do Thro The Chief Judicial Magistrate
Chengalpattu.

+1 CC to Mr.M.Vijay Anand, Advocate sr 5443.

+1 CC to Mr.Prakash Adiyapatham, Advocate sr 6223.

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and
Cr1.M.P.No.669 of 2021

LN(CO)
SP(05/02/2021)