



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.5734 of 2021 & 5866 of 2021
and
Crl.M.P.No.3703 of 2021

A.Senthilkumar

... Petitioner in both
Crl.O.P.Nos.

Vs.

E.Elango

... Respondent in both
Crl.O.P.Nos.

COMMON PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the orders dated 01.02.2021 passed in Crl.M.P.Nos.2549 & 2550 of 2020 respectively in S.T.C.No.500 of 2017 on the file of the Judicial Magistrate (Fast Track Court No.II), Erode.

For Petitioner : Mr.I.C.Vasudevan
(in both Crl.O.P.Nos.)

For Respondent : Mr.C.Harish for Mr.N.Manokaran
(in both Crl.O.P.Nos.)

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C O M M O N O R D E R

Today, when the Criminal Original Petition in Crl.O.P.No.5734 of 2021 is taken up for hearing, the learned counsel appearing for the petitioner insisted this Court to take up the Criminal Original Petition in Crl.O.P.No.5866 of 2021 along with the above said Criminal Original Petition, since the petitioner and the respondent are one and the same and the issue arising out in these Criminal Original Petitions are of same cause of action and hence, a common order is being passed.

2.The Criminal Original Petitions have been filed to set aside the order dated 01.02.2021 passed in Crl.M.P.Nos.2549 & 2550 of 2020 in S.T.C.No.500 of 2017 on the file of the Judicial



Magistrate (Fast Track Court No.II), Erode.

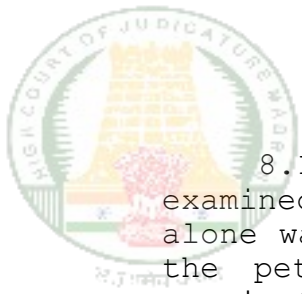
3.The above said CrI.M.P.Nos.2549 and 2550 of 2020 have been filed to reopen the case and recall the PW1/Complainant to mark additional documents.

4.The petitioner/complainant in a 138 case has examined himself as PW1 and had marked Ex.P1 to Ex.P10 on 17.07.2019. On the same day, closed the evidence on the side of the complainant and the case was posted for defence. Thereafter, the accused was question under Section 313 Cr.P.C. and the case was posted for defence evidence, if any. The respondent/accused filed a petition under Section 311 Cr.P.C. to recall the complainant for cross examination and the same was allowed on payment of Costs of Rs.500/- to the complainant by order dated 15.11.2019. When the case was posted for cross of PW1 on 16.12.2019, 20.01.2020, 07.02.2020, 12.02.2020 and 02.03.2020, the petitioner failed to appear on the above dates and the progress of the case got affected and thereafter, evidence of PW1 was ordered to be closed on 02.03.2020.

5.On 13.03.2020, the petitioner had filed a petition to reopen the case and recall himself and also permit him to mark additional exhibits on his side and the same was strongly objected by the respondent. The lower Court found that the petitioner had failed to appear for more than five occasions, after closure of the petition now filed the petitions in CrI.M.P.Nos.2549 and 2550 of 2020 and dismissed the same, against which the present petitions are filed.

6.The contention of the petitioner is that the petitioner is a business man and in connection of his business he was unable to appear before the trial court during the month of December, 2019 to March 2020. During the above said period the case was adjourned for five occasions, on all the dates petition under Section 256 Cr.P.C. was filed before the lower court and the lower court considered the reason and allowed the 256 Cr.P.C. petition. Thereafter, now raising objection for non appearance of the petitioner and dismissed the recall petition filed by the petitioner is contrary to law and not acceptable having condoned the absence of the petitioner, now the petitioner cannot be found fault with.

7.Mr.C.Harish, learned counsel appearing for the respondent submits that the petitioner failed to appear before the lower court on five occasions when he was specifically allowed to appear. Now the petitioner wants to mark the sale deed documents of his wife to prove that the petitioner was having enough resources, to lend a huge amount as loan.



8.It is seen that the respondent/accused had not cross examined the petitioner. In this case, PW1's chief examination alone was completed. In view of the same, it cannot be said that the petitioner was filing a petition to recall and further examination himself and can mark documents would amount to fill up the lacuna, which will affect the defence of the respondent. The lower court permitted the petitioner representing by his counsel by way of allowing the petition filed under Section 256 Cr.P.C. and later found fault for the non appearance and dismissed the 311 Cr.P.C. petition for non appearance of the petitioner is not proper.

9.In view of the same, the order passed by the Judicial Magistrate (Fast Track Court No.II), Erode in CrI.M.P.Nos.2549 and 2550 of 2020 in STC.No.500 of 2017 dated 01.02.2021 is set aside and the petitioner is permitted to examine further and mark documents, if he desire so. The petitioner is also directed to furnish the copy of the documents well in advance to the respondent before getting into the box.

10.With the above directions, these Criminal Original Petitions are disposed of. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

// True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate (Fast Track Court No.II),
Erode.

+2ccs to Mr.N.Manokaran, Advocate, S.R.No.29770,29771

+1cc to Mr.I.C.Vasudevan, Advocate, S.R.No.29941

CrI.O.P.Nos.5734 of 2021
& 5866 of 2021
and CrI.M.P.No.3703 of 2021

RGN (CO)
SU (25/08/2021)