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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.11287 of 2021

and

CrI.M.P.No.6592 of 2021

S.Manikandan @ Durai

... Petitioner

Versus

M/s.Minerva Jewells,
Rep by its sole proprietor,
G.Suresh, (34),
s/o Govindaraj,
78, Bazzar Street,
Gobichettipalayam,
Erode District 638476.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the order dated 23.02.2021 made in C.M.P.No.3752 of 2020 in S.T.C.No.448 of 2018 on the file of the learned Judicial Magistrate No I of Gobichettipalayam, Erode and set aside the same by allowing the Criminal Original Petition.

For Petitioner : Mr.J.Ranjithkumar

For Respondent: A.Damodaran,
Government Advocate
(Crininal Side)

ORDER

This Criminal Original Petition has been filed to set aside the order dated 23.02.2021 made in C.M.P.No.3752 of 2020 in S.T.C.No.448 of 2018 passed by the learned Judicial Magistrate No.I, Gobichettipalayam (trial Court).

2.The petitioner is the accused and the respondent is the complainant in S.T.C.No.448 of 2018. The petitioner has filed three petitions before the trial Court as follows:-

- To examine on Manikanda as defence witness and to mark documents, he has filed a petition under Section 254



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Cr.P.C., in Crl.M.P.No.3752 of 2020 in S.T.C.No.346 of 2018.

- To recall the respondent for cross examination, he has filed a petition under Section 311 Cr.P.C., in Crl.M.P.No.3753 of 2020 in S.T.C.No.346 of 2018.
- To examine himself as defence witness, he has filed a petition under Section 315 Cr.P.C., in Crl.M.P.No.3754 of 2020 in S.T.C.No.346 of 2018.

3.The trial Court, by order, dated 23.02.2021, dismissed all the above three petitions, against which the petitioner has filed the present Criminal Original Petition to set aside the order made in Crl.M.P.No.3752 of 2020, dated 23.02.2021.

4.On perusal of the orders of the trial Court, it is seen that in this case, the respondent was examined in chief on 01.05.2019 and thereafter, his evidence was closed. On 16.05.2019, the petitioner was examined and questioned under Section 313 Cr.P.C. The petitioner was given time up to 13.06.2019 to file the list of defence witnesses if any he proposes to examine. On 13.06.2019, the petitioner failed to appear before the trial Court and no representation for him. On 08.07.2019, the petitioner had appeared. Since no petition under Section 254 of Cr.P.C., was filed to examine any defence witness, the defence side witness was closed. On 27.02.2019, the petitioner filed a petition under Section 311 Cr.P.C., to cross examine the respondent. On 19.08.2019, the petition under Section 311 Cr.P.C., was allowed. Thereafter, the petitioner failed to cross examine the respondent and the case was adjourned to 16.12.2019 and on that day also, no cross examination was done and hence, the cross examination of the respondent was closed. Later on 19.12.2019, again a petition under Section 311 Cr.P.C., was filed and it was allowed on 24.08.2020. Thereafter, the case was adjourned for several hearing and the petitioner was present, but no cross examination was done. Finally on 22.10.2020, the cross examination of the respondent was done in detail and closed. On 19.11.2020, the petitioner filed a petition to conduct the proceedings of this case along with two other cases filed by the respondent under Section 138 of the Negotiable Instruments Act, 1881 against other two accused. The trial Court dismissed the same on 08.12.2020. Thereafter, the respondent's side arguments was heard and the case was posted on 14.12.2020 for defence side argument. At this stage, the above said three petitions came to be filed. Finding that no proper reason given and the petitions are filed only to protract the proceedings for one reason or other, the trial Court dismissed the above three petitions. As against the dismissal of the three petitioners, the petitioner has filed the above Criminal Original Petition to set aside the



order made in CrI.M.P.No.3752 of 2020, dated 23.02.2021.

5.It is seen that the order of the trial Court is self explanatory, which clearly depicts the conduct of the petitioner in protracting the trial for one reason or other. The petitioner had sought to examine one A.A.Manikandan as defence witness to depose about that he was partner with the petitioner and the respondent and doing turmeric business and its income and expense. Further, during cross examination of the respondent, it was putforth that the then Sub Inspector of Police, District Crime Branch, Erode conducted enquiry on the complaint of the petitioner on 16.11.2017 and the cheques were obtained. The petitioner had also sought to examine the Branch Manager, South Indian Bank Limited, Gobichettipalayam Branch to produce the document on which day, the cheque book pertaining to the cheque No.53116981 was issued; likewise the Branch Manager, HDFC Bank, Gobichettipalayam Branch to produce the statement of account from 01.01.2015 to 14.12.2020; V.Manikandan @ Mani and one A.M.Manikandan.

6.On perusal of the materials, it is seen that the petitioner was given ample opportunity and the case has been pending from the year 2018. The petitioner is protracting and delaying the cross examination. Finally on 22.10.2020, he had cross examined the respondent. The cross examination has been done in detail and the defence of the petitioner has been putforth, which has been denied by the respondent. Further, the petitioner on his own conduct has lost his right of examining the defence witnesses.

7.In view of the above, this Court is not inclined to set aside the order dated 23.02.2021 made in CrI.M.P.No.3752 of 2020 in S.T.C.No.448 of 2018 passed by the trial Court and the same is hereby confirmed. Accordingly, this Criminal Original Petition is disposed of. Though the petitioner has not filed petition to set aside the order dated 23.02.2021 in CrI.M.P.No.3754 of 2020 in S.T.C.No.448 of 2018 to examine the petitioner as witness under Section 315 Cr.P.C., this Court in the interest of justice invoking Section 482 of Cr.P.C., considered the same.

8.Considering the petitioner's submission that he is willing to examine himself as defence witness, this Court permits the petitioner to examine himself as witness under Section 315 Cr.P.C., and produce documents available with him without asking any further time. This opportunity is given taking into consideration the statutory presumption is against the petitioner and now, the petitioner wants to give explanation and produce documents.



9.It is made clear that the examination of the petitioner under Section 315 Cr.P.C., is to be done within a period of 15 days from the date of receipt of a copy of the order, after commencement of the normal functioning of the Court below. No further adjournment would be given by the trial Court for any reason. The petitioner to make final submissions, if he so desires.

10.The trial Court is directed to conclude the proceedings and pass judgment within a period of two weeks after examination of the petitioner under Section 315 Cr.P.C. Consequently, the connected Criminal Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate Court No.I,
Gobichettipalayam.

2.The Public Prosecutor,
High Court, Madras.

CRL.O.P.No.11287 of 2021

SR II(CO)
GN(23/07/2021)