

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 03.02.2021
CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl. OP No. 176 of 2018
and Crl MP No.61 of 2018

John Nicholas
Proprietor of Bright Associates,
M-3, 2nd Main Road,
TNHB, Ramapura,
Chennai 600 089.

... Petitioner/Accused

vs.

K.Jeeva Raj

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed by the Learned District Munsif (FAC), Ranipet, Vellore District in Crl. M.P.No.191/2017 in S.T.C.No.1590/2011 dated 27.06.2017.

For Petitioner : Mr.E.Kannadasan

For Respondent : Mr.T.P.Prabakaran

O R D E R

This petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioner under Section 311 of the Code of Criminal Procedure, to recall and cross examine P.W.1.

2. The respondent has filed a complaint against the petitioner for an offence under Section 138 of the Negotiable Instruments Act.

3. The respondent examined himself as P.W.1 and he was also cross-examined by the petitioner. Thereafter, the petitioner seems to have changed the counsel and the new counsel had advised that certain important questions were not asked to the respondent during the cross-examination and therefore, a petition came to be filed under Section 311 of the Code of Criminal Procedure, to recall P.W.1 for further cross-examination. This petition was dismissed by the Court below, by

an order dated 27.06.2017. Aggrieved by the same, the present petition has been filed before this Court.

4. Heard Mr.E.Kannadasan, learned counsel appearing for the petitioner and Mr.T.P. Prabakaran, learned counsel appearing for the respondent.

5. The Court below has dismissed the application filed under Section 311 of the Code of Criminal Procedure, mainly on the ground that the petitioner has not given any reason, as to why, a further cross-examination is required and the reason assigned by the petitioner that there is a change of counsel representing the petitioner, was not accepted by the Court below. The Court below held that an application under Section 311 of the Code of Criminal Procedure cannot be allowed in a mechanical fashion without any valid reasons to recall a witness.

6. This Court does not find any illegality or infirmity in the order passed by the Court below and the Court below was perfectly right in finding that change of counsel can never give rise to a cause of action for recalling a witness for further cross-examination. This case has been pending from the year 2011 onwards and it is informed that the matter stands posted on 25.02.2021, before the Court below. This Court wants to offer one last opportunity to the petitioner.

7. 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.1,00,000/-, before the Court below in STC No.1590 of 2011, on or before 25.02.2021 without prejudice to his rights to contest the complaint;

b) The Court below on being satisfied that the petitioner has complied with the condition imposed by this Court in Clause (a) shall permit the petitioner to cross-examine the respondent on 25.02.2021. It is made clear that the cross-examination shall be completed on the same day;

c) If the petitioner does not comply with the condition imposed in Clause (a), the order passed by the Court below in CMP No.191 of 2017 dated 27.06.2017 shall stand revived

and the petitioner will not be entitled to further cross-examination of the respondent; and

d) The Court below is directed to complete the proceedings in STC No.1590 of 2011, within a period of two months from the date of receipt of a copy of this order and a compliance report shall be filed before this Court.

Sd/-

Assistant Registrar (CS.VIII)

/True Copy/

Sub Assistant Registrar

To

The District Munsif (FAC),
Ranipet,
Vellore District.

+1cc to Mr.E.Kannadasan, Advocate Sr.No.5680

AKM/25.2.21 /3P-3C/

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