

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2021

CORAM

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

Crl.O.P.Nos.20780 & 21088 of 2020 &
Crl.M.P.Nos.8926 abd 8849 of 2020

Chakrvarthi

... Petitioner in both
Ops.

Vs.

Rajavel

... Respondent in
both OPs

PRAYER: Criminal Original Petitions are filed under Section 482 of the Code of Criminal Procedure, to call for the records and set aside the order dated 11.11.2020 made by the Judicial Magistrate No.1, Namakkal in CMP.No.1481 of 2020 and CMP.No.1497 of 2020 in C.C.No.487 of 2015.

For Petitioner : Mr.V.Jeeva Giridharan

COMMON ORDER

The issue involved in these petitions are common and they are taken up together and this common order is passed.

2. The petitioner has been arrayed as an accused in a complaint filed by the respondent before the Court below for an offence under Section 138 of the Negotiable Instruments Act. The respondent examined himself as PW1 on 26.10.2018 and marked seven documents Ex.P.1 to P7. Since he was not cross examined, the evidence of PW1 was closed. The petitioner filed a petition to recall PW1 for cross examination and the same was allowed by the Court below by an order dated 12.06.2019.

3. The matter was thereafter posted on 6.9.2019 and 5.12.2019 and since the respondent was not present, the petitioner was not able to cross examine him and the Court below ultimately closed the evidence on 5.12.2019.

4. While so, the respondent filed an application on 21.2.2020 to recall himself and to subject himself for cross examination by the petitioner. The Court below allowed the petitions on payment of cost by an order dated 11.11.2020. Aggrieved by the order passed in both the applications in CMP.No.1497 and 1481 of 2020, the present petitions have been filed before this Court.

5. The learned counsel for the petitioner submitted that the respondent who was examined as PW1 repeatedly absented himself and did not subject himself for cross examination by the petitioner. The learned counsel further submitted that the petitioner has already presented the oral arguments and the court below after hearing the arguments from both sides, had even reserved the case for passing judgment. While so, the respondent, in order to fill up the lacuna, has again made an attempt to reopen the case by subjecting himself for cross examination. The learned counsel submitted that a recall/reopen petition should not be entertained where the intention behind those petitions is only to fill up the lacuna and prolong the proceedings.

6. This Court has carefully considered the submissions made by the learned counsel for the petitioner and the order passed by the Court below. The Court below has merely allowed the petition filed by the respondent on payment of cost. No Court can insist a party to cross examine the witness and it is always the discretion of the accused person to either cross examine or report no cross examination

of the witness. The court below after taking into consideration the facts and circumstances of the case, has passed the order by reopening the evidence of PW1 for cross examination by the petitioner. This Court does not find any illegality or infirmity in the order passed by the Court below.

7. If the petitioner is willing to cross examine PW1, he can very well do so. On the other hand, if the petitioner does not want to cross examine PW1, he can always report no cross examination of the witness and the same should be recorded by the Court below and the Court below will have to proceed further to hear the case and render a final judgment. The option is completely left in the hands of the petitioner and neither the Court below nor this Court can insist upon the petitioner to cross examine any witness. It will suffice if this clarity is given while disposing of these petitions.

8. In view of the above discussion, these Criminal Original petitions are disposed of with a direction to the Court below to complete the proceedings by passing final judgment within a period of six weeks from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petitions are closed.

05.01.2021

msr

Index: Yes/No

Internet: Yes/No



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N. ANAND VENKATESH, J.

msr

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