



WEB COPY

5.The petitioner filed CrI.M.P.No.851 of 2021 in S.T.C.No.721

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

CrI.O.P. (MD) Nos.10081 & 10167 of 2021

and

CrI.M.P. (MD) Nos.5146 & 5193 of 2021

M.K.Rajesh Kannan

... Petitioner in both CrI.O.Ps.,

Vs.

Tulasi Ram

..Respondent in both CrI.O.Ps.,

COMMON PRAYER: Criminal Original Petitions are filed under Section 482 of Cr.P.C, to call for the records in connection with the order passed by the learned Judicial Magistrate, Nilakottai in Cr.M.P.Nos.853 and 851 of 2021 in S.T.C.Nos.722 and 721 of 2016 dated 03.03.2021 and set aside the same.

For Petitioner

in both CrI.O.Ps.,

: Mr.S.Sivaprakash

COMMON ORDER

These petitions have been filed seeking to set aside the order passed by the learned Judicial Magistrate, Nilakottai in Cr.M.P.Nos.853 and 851 of 2021 in S.T.C.Nos.722 and 721 of 2016 dated 03.03.2021.

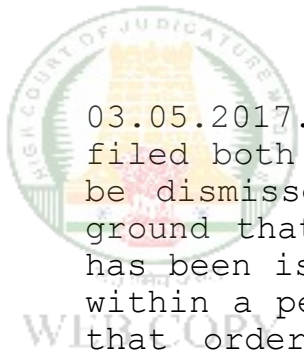
2.The brief facts are as follows:-

3.The petitioner in both the matters is facing the charges under Section 138 of the Negotiable Instruments Act before the learned Judicial Magistrate, Nilakottai in S.T.C.Nos.722 and 721 of 2016.

4.After completing the formalities, the case has been filed against this petitioner and the trial is proceeding. During the pendency of the trial proceedings, this petitioner filed recall petitions in both the matters in CrI.M.P.Nos.853 and 851 of 2021 in S.T.C.Nos.722 and 721 of 2016.

5.The petitioner filed CrI.M.P.No.851 of 2021 in S.T.C.No.721 of 2016 to recall P.W1, who was examined in chief on 03.05.2017 and was not cross-examined on the same day itself. Later only, the petitioner filed CrI.M.P.No.851 of 2021 on 12.02.2021, after a lapse of 5 years. Similarly, the petitioner filed CrI.M.P.No.853 of 2021 in S.T.C.No.722 of 2016 to recall P.W1, who was examined in chief on

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03.05.2017. Since simultaneous trial is undertaken, the petitioner filed both the petitions to recall P.W1. Both the petitions came to be dismissed by the trial Court by order dated 03.03.2021 on the ground that in Crl.O.P.(MD) Nos.9944 and 9046 of 2019, a direction has been issued to the concerned Court to complete the trial process within a period of two months from the date of receipt of a copy of that order. So, on that ground, both the petitions came to be dismissed.

6.Challenging the correctness of the order, the present petitions came to be filed mainly on the ground that the petitioner's counsel, who was on record during the relevant time, could not cross examine P.W1 as he has to get some information and collect materials with regard to the other issues. Even though the ground, which has been raised in these petitions, is not satisfactory, the fact remains that if P.W1, who is the complainant, if not cross-examined, the case of the petitioner will be affected.

7.The purpose for the cross-examination has been more fully described and discussed in **Kartar Singh Vs State of Punjab** reported in **(1994) 3 SCC 569**. The points, which have been raised by the Hon'ble Supreme Court, are extracted hereunder:-

"Section 137 of the Evidence Act defines what cross-examination means and Sections 139 and 145 speak of the mode of cross-examination with reference to the documents as well as oral evidence. It is the jurisprudence of law that cross-examination is an acid-test of the truthfulness of the statement made by a witness on oath in examination-in-chief, the objects of which are:

(1) to destroy or weaken the evidentiary value of the witness of his adversary;

(2) to elicit facts in favour of the cross-examining lawyer's client from the mouth of the witness of the adversary party;

(3) to show that the witness is unworthy of belief by impeaching the credit of the said witness:

and the questions to be addressed in the course of cross-examination are to test his veracity; to discover who he is and what is his position in life; and to shake his credit by injuring his character."

8.So, I am of the considered view that if the case is allowed to proceed without cross-examination of P.W1, then it cannot be termed as a fair trial. Unchallenged evidence may lead to miscarriage of justice. So, on that sole ground, I am of the



considered view that both the petitions are liable to be allowed with the following stringent conditions.

1) Within a period of 15 days from the date of receipt of a copy of this order, the petitioner in both the cases must deposit a sum of Rs.5,000/- as cost to P.W1.

2) On such deposit, the trial Court is directed to recall P.W1 for cross examination by fixing a particular date. On that date, the petitioner must cross examine the witness without fail. If any failure is noticed, then the further right to cross examine the witness will be forfeited.

9.Since a direction has been issued in Crl.O.P.(MD) Nos.9944 and 9046 of 2019, time is *suo motu* extended further for a period of two months to complete the trial process in this petition. After that, the compliance report must be submitted to the Registry.

10.It has been further brought to the notice of this Court that the trial Court has adjourned the matter to 27.08.2021 for pronouncing judgment.

11.Let a copy of this order be informed telephonically to the Concerned Court and the Registry is directed to despatch the order copy immediately.

12.These petitions are allowed, accordingly. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Judicial Magistrate,

<https://hcservices.mysore.gov.in/>



5.The petitioner filed Crl.M.PNo.851 of 2021 in S.T.C.No.721

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:-

The Registrar (Judicial),
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P.(MD)Nos.10081 & 10167 of 2021
27.08.2021

GC (03.09.2021) 4P 4C