



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2021

CORAM :

THE HONOURABLE **Mr. JUSTICE G.ILANGOVAN**

Crl.O.P.(MD)No.2947 of 2019

Jawahar

.... Petitioner

Vs.

Sabari Giri

.... Respondent

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order of the learned Judicial Magistrate No.I, Dindigul dated 03.11.2018 made in Crl.M.P.No.5975 of 2018 in C.C.No.155 of 2015 and consequently permit the petitioner to cross examine the complainant in the above case forthwith.

For Petitioner	: Mr.S.Palani Velayutham
For Respondent	: Mr.Sarvagan Prabhu

ORDER

This petition is filed to set aside the order of the learned Judicial Magistrate No.I, Dindigul dated 03.11.2018 made in Crl.M.P.No.5975 of 2018 in C.C.No.155 of 2015 and consequently permit the petitioner to cross examine the complainant in the above case forthwith.

2. The petitioner is facing trial before the Court below for the offence under Section 138 of NI Act. The petitioner submitted that during the course of trial process, the petitioner is not in a position to cross-examine the witnesses. So, re-call petition has been filed by him, which came to be dismissed by the learned Judicial Magistrate No.I, Dindigul, observing that there was a long delay in presenting the petition and no proper reason was assigned for non cross examining the witnesses. Hence, this petition.

3.The learned counsel for the petitioner would submit that one more opportunity may be given to the petitioner to cross-examine the witnesses.



4. Heard both sides.

5. The reason for the non-cross-examination of the witnesses on the date of chief examination, it appears that it is not properly explained by the petitioner. After a lapse of several years, this petition came to be filed and the reason given by the petitioner for the above said delay cannot be appreciated. But, the petitioner is facing the serious offence under Section 138 of NI Act.

6. But, however, in the facts and circumstances of the case, I am of the considered view that one more opportunity can be given to the petitioner to cross-examine the material witnesses.

7. The purpose of cross-examination has been clearly enunciated by the Hon'ble Supreme Court in **Kartar Singh Vs State of Punjab** reported in (1994) 3 SCC 569. So, the points, which have been raised by the Hon'ble Supreme Court is 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, this position is also been pressed in the case of **Jayendra Vishnu Thakur Vs. State of Maharashtra** reported in (2009) 7 SCC 104 in the following words:-

"A right to cross-examine a witness, a part from being a natural right is a statutory right. Section 137 of the Evidence Act provides for examination-in-chief, cross-examination and re-examination. Section 138 of the Evidence Act confers a right on the adverse party to cross-examine a witness who had been examined in chief, subject of



effect. But, indisputably such an opportunity is to be granted. An accused has not only a valuable right to represent himself, he has also the right to be informed thereabout. If an exception is to be carved out, the statute must say so expressly or the same must be capable of being inferred by necessary implication. There are statutes like the Extradition Act, 1962 which excludes taking of evidence vis-a-vis opinion."

9. So, in the light of the above, I am of the considered view that one last opportunity may be given to the petitioner. So, this petition is liable to be allowed and the order passed by the learned Judicial Magistrate No.I, Dindigul, in Crl.M.P.NO.5975 of 2018 in C.C.No.155 of 2015 dated 03.11.2018, is set aside with the following conditions:-

(i) The petitioner must deposit Rs.2,500/- (Rupees Two Thousand Five Hundred Only) as cost to the each witness before the Trial Court within 15 days from the date of receipt of a copy of this order.

(ii) On deposit being made, the Trial Court may re-call the witnesses by fixing the two consecutive days for cross examination and shall send summons to the witnesses.

(iii) On the date fixed, the petitioner must cross examine the witnesses without fail. If any failure is noticed, then the right of cross examination of the witnesses will be forfeited.

10. With the above direction, this Criminal Original Petition is allowed. Since the matter is of the year 2015, the Trial Court is directed to dispose of the case within a period of three months from the date of cross examination of the witnesses. After disposal, the compliance report must be submitted to the Registry of this Court.

Sd/-

Assistant Registrar (CS III)

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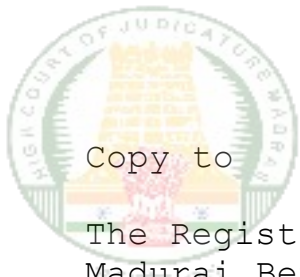
Sub Assistant Registrar(CS)

tta

To

The Judicial Magistrate No.I,
Dindigul.

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



Copy to

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

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+1 CC to M/s.S. SARVAGANPRABHU, Advocate (SR-34676[F] dated
16/11/2021)

CrI.O.P. (MD) No.2947 of 2019
15.11.2021

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