



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.11.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.OP(MD)No.3393 of 2019

and

Crl.MP(MD)No.1922 of 2019

WEB COPY

Murugesan

... Petitioner/Accused

Vs.

Ramasamy

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records and set aside the order passed by the learned Judicial Magistrate, Manapparai in Cr.M.P.No.407 of 2019 in S.T.C.No.3183 of 2016 dated 25.02.2019 in respect of dismissal the petition filed by the petitioner under Section 311 of Cr.P.C. for recalling of P.W.1 for the Cross examination within a time frame fixed by this Court.

For petitioner : Mr.Sivabalan
For Respondent : Mr.Joel Paul Antony

O R D E R

This petition is filed to call for the records and set aside the order passed by the learned Judicial Magistrate, Manapparai in Cr.M.P.No.407 of 2019 in S.T.C.No.3183 of 2016 dated 25.02.2019 in respect of dismissal the petition filed by the petitioner under Section 311 of Cr.P.C. for recalling of P.W.1 for the Cross examination within a time frame.

2. The petitioner is facing trial before the Court below for the offence under Section 138 of NI Act and the witnesses were examined in chief on various dates. The petitioner has collected the vital documents through RTI Act 2005, after the cross examination of P.W.1. Hence, the petitioner wants to cross-examine P.W.1. So, recall petition has been filed by him and the same was dismissed by the learned Judicial Magistrate, Manaparai, dated 25.02.2019, observing that the petitioner who remained absconded for a considerable length, was secured after coercive steps and the petitioner did not furnish the particulars of the documents. Moreover, the petitioner had cross examined P.W.1 earlier at a considerable length. Aggrieved by the same, the present petition has been filed.

3.The learned counsel for the petitioner would submit that one more opportunity may be given to the petitioner to cross-examine P.W.1.



4. Heard both sides.

5. The reason for the cross-examination of the witnesses 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 shall 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 course to expression of his desire to the said 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 threabout. 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 is given to the petitioner. So, this petition is liable to be allowed and the order passed by the learned Judicial Magistrate, Manapparai, in Cr.M.P.No.407 of 2019 in S.T.C.No.3183 of 2016, dated 25.02.2019, is quashed with the following conditions:-

(i) The petitioner must deposit Rs.3,000/- (Rupees Three Thousand 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. Consequently, the connected miscellaneous petition is closed.

11. Since the matter is of the year 2016 and the accused is aged about 80 years, the Trial Court is directed to dispose of the case in S.T.C.No.3183 of 2016 within a period of five months from the date of cross examination of P.W.1. After disposal of the case on merits, compliance report must be submitted to the Registry.

Sd/-

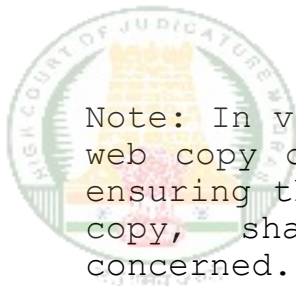
Assistant Registrar (AD-II)

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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.

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To,

- 1.The Judicial Magistrate,
Manapparai
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

COPY TO:

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

+2 CC to M/s.K. SIVABALAN, Advocate (SR-35581 & 35938[F]

CrI.OP(MD)No.3393 of 2019

23.11.2021

MMS (CO)

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