



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 03.09.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P. (MD)No.8386 of 2021

and

Crl.MP(MD)No.4308 of 2021

Merlin Jacob ... Petitioner
Vs.
Krishnamoorthy ... Respondent

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in C.M.P.No.638 of 2019 in S.T.C.No.193 of 2016 on the file of Judicial Magistrate, No.I, Padmanabhapuram and to set aside the same and permit the petitioner to cross examine the witness P.W.1.

For Petitioner : Mr.S.C.Herold Singh.
For R1 : Mr.C.K.M.Appaji,
Additional Public Prosecutor.

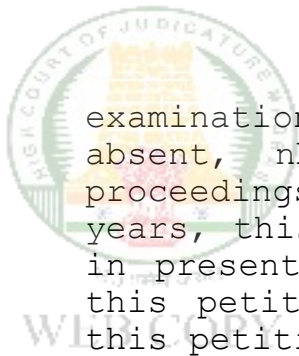
ORDER

This Criminal Original Petition is filed to quash the records in C.M.P.No.638 of 2019 in S.T.C.No.193 of 2016 on the file of Judicial Magistrate, No.I, Padmanabhapuram and permit the petitioner to cross examine the witness P.W.1.

2. The petitioner is facing trial before the Trial Court for the offence under Section 138 Negotiable Instruments Act. P.W.1 was examined in chief on 19.07.2017. The petitioner has omitted to cross-examine the witness. So, re-call petition has been filed by him, on 01.02.2019. Which came to be dismissed by the learned Judicial Magistrate, Padmanabhapuram, by the order, dated 15.02.2019, observing that there was a long delay in presenting the petition and non co-operation of the petitioner. After a lapse of 2 ½ years, this petition came to be filed.

3.The learned counsel for the petitioner would submit that only due to the absence on the side of the petitioner's counsel, could not cross examine PW.1, on 07.08.2017. He would further submit that one opportunity may be given to the petitioner to cross-examine P.W.1.

4. According to the learned counsel for the respondent, chief



examination of the respondent was over and the petitioner remain absent, nbw was issued and it was recalled. on 01.02.2019, proceedings under Section 313 Cr.P.C are over. After a lapse of 2 ½ years, this petition came to be filed. So, observing the long delay in presenting the petition and non co-operation of the petitioner, this petition was dismissed by the Trial Court. So, no merits in this petition and the same is liable to be dismissed.

5. Heard both sides.

6. But, however, it appears that on the earlier occasion the petitioner filed a petition before this Court in Crl.OP(MD)No.4245 of 2019 seeking transfer the case in S.T.C.No.193 of 2016 from the learned Judicial Magstration No.I, Padmanabhapuram to any one of the learned Judicial Magistrate Court, Tirunelveli on the ground that the petitioner has been threatened, when he appeared before the Trial Court. The respondent being a Advocate, that petition came to be dismissed on undertaking given by the respondent that he will not make any trouble to him.

7. But, however, in the facts and circumstances of the case, I am of the considered view that one more opportunity may be given to the petitioner to cross-examine P.W.1.

8. 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."

9. So, this position is also been pressed in the case of **Jayendra Vishnu Thakur Vs. State of Maharashtra** reported in **(2009) 7**
<https://hcservices.ecourts.gov.in/hcservices/>



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 thereof. 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."

10. 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 No.I, Padmanabhapuram, in C.MP.No.638 of 2019 in S.T.C.No.193 of 2016, dated 15.02.2019, is set aside with the following conditions:-

(i) The petitioner must deposit Rs.5000/- (Rupees Five Thousand and Five Hundred Only) as cost to the witness before the Trial Court within 15 days from the date of resumption of normal work.

(ii) The Trial Court may fix a date for cross examination of the witness.

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

11. With the above direction, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (A.D.II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dss

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

The Judicial Magistrate, No.I,
Padmanabhapuram.

WEB COPY
+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-28308[F] dated
07/09/2021)

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