



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE **G.ILANGOVA**

Crl.O.P. (MD)No.9060 of 2021

and Crl.M.P. (MD)No.4639 of 2021

Lakshmanan

... Petitioner

Vs.

Arumugapandian

... Respondent

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to set aside the order dated 03.05.2021 passed in Cr.M.P.No.1506 of 2021 in STC No.451 of 2017 on the file of the Judicial Magistrate, Alangulam.

For Petitioner : Mr.A.Sankararamasubramanian

O R D E R

This petition is filed seeking to set aside the order of dismissal dated 03.05.2021 passed by the learned Judicial Magistrate, Alangulam, in Cr.M.P.No.1506 of 2021 in STC No.451 of 2017.

2. The petitioner is facing trial before the trial Court in STC No.451 of 2017 for the offence under Section 138 of the Negotiable Instruments Act. P.W.1 was examined in chief on 26.08.2014 and the case was posted for cross examination of P.W.1 on 09.11.2020, but, on that day, P.W.1 was not cross examined on the ground that the learned counsel appearing for the accused did not appear on that day, since he got a job in Government Service. Thereafter, the accused engaged the present counsel and after that only, the petition to recall the witness of P.W.1 came to be filed. Considering the fact that the case was pending for more than seven years, the trial Court dismissed the said petition on 03.05.2021. Challenging the same, the present petition has been filed.

3. Heard the learned counsel for the petitioner.

4. Even though the reason given by the petitioner for non-cross examination of P.W.1 is not acceptable, without cross examining P.W.1, it may not be possible to render fair justice. Therefore, I am of the considered view that one more opportunity shall be given to the petitioner to cross-examine P.W.1.

<https://hcservices.courts.gov.in/hcservices/> 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**. The Hon'ble Supreme Court says

"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:

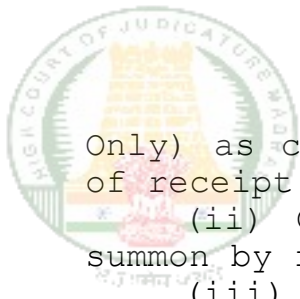
and the questions to be addressed in the course of cross-examination are to test his veracity; to discover who he is and what is his position in life; and to shake his credit by injuring his character."

6 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 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."

7. 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, Alangulam, in Cr.MP.No.1506 of 2021 in STC No.451 of 2017 dated 03.05.2021, is set aside with the following conditions:-

<https://hcservices.courts.gov.in/hcservices/> The petitioner must deposit Rs.2000/- (Rupees Two Thousand



Only) as costs before the Trial Court within 15 days from the date of receipt of a copy of this order.

(ii) On such deposit being made, the Trial Court shall send summon by fixing a date for cross examination of P.W.1;

(iii) On the date fixed, the petitioner must cross examine the P.W.1 without fail. If any failure is noticed, then the right of cross examination of P.W.1 will be forfeited.

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

Sd/-

Assistant Registrar (CS I)

// 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,
Alangulam.

Crl.O.P. (MD)No.9060 of 2021
09.07.2021

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MGJ(16.07.2021) 3P 2C