

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.1408 of 2022 and
Crl.M.P.No.555 of 2022

A.Senthilkumar

... Petitioner

..Vs..

Kumar

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to set aside the order dated 14.12.2021 made in Crl.M.P.No.5200 of 2021 in S.T.C.No.431 of 2018 on the file of Judicial Magistrate/FTC No.II at Erode.

For Petitioner : Mr.M.Guruprasad

O R D E R

This petitioner/accused facing trail for offence punishable under Section 138 of Negotiable Instruments Act in S.T.C.No.431 of 2018, before the learned Judicial Magistrate (Fast Track Court No.II), Erode has filed this quash petition.

2. The case of the petitioner is that respondent herein instituted a complaint against the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, stating that the petitioner herein borrowed a sum of Rs.4,00,000/- from the respondent for his business and thereafter issued a cheque bearing No.000102 dated 21.05.2018 drawn of HDFC Bank, Tirupur and when the same was presented for collection the same was returned as "Payment Stopped by the Drawer" 22.05.2018 and thereafter the respondent herein had issued a legal notice on 29.05.2018 and despite the same being received by the petitioner, he failed to repay the cheque amount.

3. The petitioner further states that when the above said case was posted on 02.11.2021 for cross examination of the complainant, the counsel for the petitioner went to Namakkal District with regard to an enquiry in A.S.No.24 of 2019 before the Additional District Judge, Namakkal and therefore the petitioner could not cross examine the complainant and the trial Court has closed the cross examination of the complainant. Hence, the petitioner filed a petition under

Section 311 Cr.P.C. in C.M.P.No.5200 of 2021 to recall the witness of P.W.1 for the purpose of cross examination. The trial Court by an order dated 14.12.2021 dismissed the same. Challenging the same the present Criminal Original Petition is filed.

4. The learned counsel appearing for the petitioner submitted that the P.W.1 is the primary witness in this case, who has to be necessarily cross examine to put forth his defense and in addition to that since the case pertains to Section 138 of Negotiable Instruments Act, the petitioner has to put forth his case by cross examining the complainant, which fact has not been considered by the Court below.

4. A perusal of order passed by the trial court would go to show that the present petition is the second petition for the same relief. Initially the petitioner filed C.M.P.No.8875 of 2019 to recall P.W.1 for the purpose of cross examination and the same was allowed on 31.12.2019. Thereafter on several hearings, the respondent/complainant appeared but the petitioner/accused failed to appear before the trial Court and due to Covid 19 pandemic lockdown the case was continuously adjourned till 17.08.2020 and thereafter on several occasions though the complainant was very much available for cross examination. the petitioner had not chosen to cross examine the complainant and on 02.11.2021 the complainant was made to present till 1.15 P.M. , for examine and thereafter failed to cross examine him and hence the cross examination of the complainant was closed. The Trial Court on considering these aspects and finding that the case is pending from 31.12.2019 has dismissed the C.M.P.No.5200 of 2021 on 14.12.2021.

5.This Court considering the fact that the case is pending from 2018 and petitioner/accused has not chosen to cross examine the complainant despite several opportunities being given, this Court deems it fit to direct the petitioner to deposit a sum of Rs.1,00,000/- before the trial Court for cross examination of P.W.1.

6. Accordingly, the petitioner is directed to deposit a sum of Rs.1,00,000/- (Rupees One Lakh only) before the trial Court to the credit of S.T.C.No.431 of 2018, along with necessary affidavit to reopen and recall P.W.1 for the purpose of cross examination, within a period one week from the date of normal functioning of the court and on receipt of the same, the evidence of P.W.1 shall be recalled and the petitioner shall cross examine the complainant on a day-to-day basis and complete the same, within three working days thereafter.

7. With the above directions, this Criminal Original Petition is disposed of. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

arr

To

1. The Judicial Magistrate/FTC No.II,
Erode.

+1cc to Mr.M.Guruprasad, Advocate SR.No.5343

Cr1.O.P.No.1408 of 2022

SPD(CO)
GMY(02/02/2022)