



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2022

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.5234 of 2022
and
Crl.M.P.No.2830 of 2022

Ramachandran

... Petitioner

Vs

Periyasamy

... Respondent

PRAYER: This Criminal Original Petition filed under Section 482 Cr.P.C., pleased to set aside the order dated 28.12.2021 passed in C.M.P.No.2240/2021 in C.C.No.233 of 2016 on the file of the Judicial Magistrate, Fast Track Court, Kallakkurichi and allow the Criminal Original Petition in to recall the PW1 Periyasamy for further cross examination.

For Petitioner : Mr.R.Bharath Kumar

For Respondent : No Appearance

ORDER

The Criminal Original Petition has been filed to set aside the order dated 28.12.2021 passed in C.M.P.No.2240/2021 in C.C.No.233 of 2016 on the file of the Judicial Magistrate, Fast Track Court, Kallakurichi and to recall the PW1 Periyasamy for further cross examination.

2. Brief facts of the case is that the petitioner is an accused in C.C.No.233 of 2016 pending on the file of Judicial Magistrate, Fast Track Court, Kallakurichi for the offence under Section 138 of Negotiable Instruments Act. The petitioner had filed an application in C.M.P.No.2240 of 2021, seeking to recall PW1 in order to assess about his income and to revert the presumptions about financial capacity of PW1. The respondent had filed a counter stating that the complaint was filed in the year 2015 and it was pending for more than 7 years. PW1 was cross examined in all aspects and on a previous occasion, petition to recall PW1 was allowed and thereafter, the case has been posted for arguments and after arguments, the case was reserved for



judgment. At that stage, the petition to recall PW1 for cross examination was filed. The trial Court had dismissed the same, against which the present petition has been filed.

3. Learned counsel for the petitioner would submit that the petitioner is facing trial for the offence under Section 138 of Negotiable Instruments Act in C.C.No.233 of 2016 on the file of the Judicial Magistrate, Fast Track Court, Kallakurichi. The petitioner had filed an application in C.M.P.No.2240 of 2021, seeking to recall PW1 for further cross examination with regard to his financial capacity. However, the Trial Court, without taking into consideration the necessity, had dismissed the application, against which the present petition has been filed.

4. Heard the learned counsel appearing for the petitioner and perused the materials available on record including the impugned order.

5. In this case, PW1 had been examined in chief on 17.12.2015 and the trial Court had granted time till 23.09.2016, for cross examination of PW1. Thereafter, the petitioner had absented himself and bailable warrant was issued on 20.10.2016. The petitioner/accused had surrendered on 11.11.2016 and the bailable warrant had been recalled. Thereafter, the Trial Court had granted further time for cross examination of PW1 till 25.05.2017 and once again, the petitioner/Accused had not appeared and thereby, bailable warrant was issued against the accused/petitioner on 12.06.2017. The petitioner had surrendered on 16.08.2021 and the bailable warrant was recalled. The petitioner/accused had failed to cross examine PW1 and the evidence of PW1 was closed on 01.02.2018 without cross examination.

6. The petitioner had earlier filed C.M.P.No.549 of 2019 for recalling PW1 and the petition was allowed and the case was posted for cross examination on 07.09.2019. Thereafter, the case was posted to 16.09.2019 and PW1 was cross examined in part and finally the cross examination of PW1 was completed on 28.11.2019. Subsequently, after Covid-19 pandemic period, the petitioner had filed a petition under Section 311 of Cr.P.C. and reopened the case for defence evidence and the same was allowed by the trial Court. The petitioner/accused had examined himself as RW1 on 04.10.2021, thereafter, RW2 was examined on 10.11.2021. The trial Court had granted further time to both counsel and posted the matter for judgment. At that time, the present petition had been filed by the petitioner/accused seeking to recall PW1 once again for further cross examination. The Trial Court further finding that the petitioner had cross examined PW1 at length on 16.09.2019 and also going through the deposition, has found that the petitioner had cross examined PW1



relating to the financial capacity had dismissed the petition, stating that there is no merits in this case.

7. This Court also perused the records and the deposition filed along with this petition and found that sufficient time had been given by the trial Court and the petitioner had also cross examined PW1 with regard to the financial capacity. In such circumstances, the petition to recall PW1 for further cross examination is nothing but an abuse of process of law only in order to prolong the proceedings. This Court does not find any infirmity in the orders passed by the learned trial Judge.

8. In view of the above, the Criminal Original Petition stands dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

ham/rgi

To

1. The Judicial Magistrate,
Fast Track Court, Kallakurichi

Crl.O.P.No.5234 of 2022
and Crl.M.P.No.2830 of 2022

MT(CO)
GMY(31/03/2022)