



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2022

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.6320 of 2022
and Crl.M.P.No.3538 of 2022

Tmt.Amirthammal

...Petitioner/Accused

Vs.

Seshagiri Rao (died)

Represented by his son M.V.S.Deepak.

...Respondent

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, pleased to set aside the order dated 28.02.2022 in Crl.M.P.No.369 of 2022 in STC No.284 of 2013 passed by the Judicial Magistrate, Thiruvotriyur.

For Petitioner : Mr.V.Parthiban

For Respondent : Mr.A.Thirumaran

O R D E R

This petition has been filed seeking to set aside the order dated 28.02.2022 in Crl.M.P.No.369 of 2022 in STC No.284 of 2013 passed by the Judicial Magistrate, Thiruvotriyur by dismissing the petition filed under Section 311 of Cr.P.C. to recall the son of the original complainant for cross examination.

2. Brief facts of the case is that the petitioner is an accused facing trial in STC No.284 of 2013 on the file of the Judicial Magistrate, Thiruvotriyur for offences under Section 138 of Negotiable Instruments Act. On the complaint given by one Seshagiri Rao (Deceased), the case was taken on file during the year 2013 and the complainant had examined himself as PW1 on 15.09.2014. The petitioner/accused had not cross examined the complainant. During the pendency of the complaint, the said Seshagiri Rao died on 12.07.2020. Thereafter, the legal heir of the said Seshagiri Rao was substituted by the Court. At this juncture, the petitioner/accused had filed an application under Section 311 of Cr.P.C., to cross examine the son of the original complainant. The substituted complainant had filed a counter affidavit stating that he is not aware of the transaction between the petitioner/accused and his father and that his father had already been examined in chief and the



petitioner/accused had not taken any steps to recall or cross examine, while his father was alive and that the petition to recall was filed only to protract the proceedings. It was also contended that earlier the petitioner/accused had absconded and thereby, the respondent/complainant had filed Crl.O.P.No.5607 of 2019 for execution of bailable warrant and only thereafter, she had surrendered and once again she had filed Crl.O.P.No.20996 of 2021 and this Court had dismissed the application with a direction to the trial Court to complete the trial within a period of three months and it was further contended that the petitioner had filed the petition only with the motive of dragging the proceedings. The trial Court finding that the petitioner had not cross examined the original complainant for 6 years and 5 months while he was alive and there was no necessity to cross examine the son of the complainant, had dismissed the application. Against which, the present petition has been filed.

3. Mr.V.Parthiban, learned counsel appearing for the petitioner would submit that the petitioner is an accused facing charges for the offence under Section 138 of Negotiable Instruments Act. He would further submit that there are statutory presumptions against the petitioner and she has to rebut the presumptions against her. Thereby, the petition has been filed seeking to cross examine the son of the original complainant. Whereas, the trial Court without taking into consideration the necessity, had dismissed the petition. He would also submit that the trial Court had even negatived and denied the request of the petitioner to examine herself as a defence witness, thereby denying opportunity of fair trial.

4. Mr.A.Thirumaran, learned counsel for the respondent/complainant would submit that the complaint is being now represented by the son of the original complainant. The son of the original complainant has no knowledge about the transaction between his father and the petitioner/accused and there is no necessity of him to let in evidence or cross examined. The petitioner had failed to cross examine his father for 6 years and 5 months, after the examination in chief while he was alive and thereby, the petition has been filed only to delay the proceedings. However, the learned counsel for the petitioner would fairly submit that the petitioner was not afforded an opportunity to let in evidence by way of defence. He would further submit that the case now stands posted for orders on 30.03.2022 and if the petitioner is permitted to give evidence by way of defence, it has to be completed within one day and the respondent/complainant undertakes to cross examine the petitioner on the same day of her evidence in chief.



5. Heard the learned counsel and perused the materials available on record.

6. The trial Court rightly finding that the petitioner has not examined the original complainant while he was alive for 6 years and 5 months and also finding that there is no requirement for cross examining the son of the original complainant has rightly dismissed the same. However, it is seen that the petitioner has not been afforded opportunity to let in evidence by way of defence.

7. In view of the above, a direction is issued to the learned trial Judge to afford opportunity and permit the petitioner/accused to let in evidence by way of defence on or before 28.03.2022, after putting the counsel for the complainant on notice. After the petitioner/accused is examined in defence, the trial Court shall deliver judgment in STC.No.284 of 2013.

8. Accordingly, this Criminal Original Petition stands disposed of. Consequently, the connected miscellaneous petition is also closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rgi/ham
To

1.The Judicial Magistrate, Thiruvotriyur.

2.Do Thro The Chief Judicial Magistrate, Chennai

+1 CC to Mr.V.Parthiban, advocate sr 18846
+1 CC to Mr.A.Thirumaran, Advocate sr 18757

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GMR (CO)
SP(22/03/2022)