



CRL.O.P.No.19128 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2022

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

Crl.O.P. No.19128 of 2021

M.Raja Ganapathi,
S/o.Narayanan,
L.780, 24th Cross, 2nd Main Road,
TNHB HUDCO,
Royakottai,
Hosur, Krishnagiri District.

...

Petitioner

Versus

R.Palanivel

...

Respondent

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to set aside the order in CMP.No.2528 of 2021 in STC.No.791 of 2018 dated 09.09.2021, on the file of the learned Judicial Magistrate No.4, Salem.

For Petitioner : Mr.T.Shanmugam

For Respondent : Mr.L.Mouli

ORDER

This Criminal Original Petition has been filed to set aside the order in C.M.P.No.2528 of 2021 in STC.No.791 of 2018 dated 09.09.2021 on the file of the learned Judicial Magistrate No.4, Salem.



WEB COPY

2. The petitioner is the accused in the private complaint given by the respondent for the offence under Section 138 of Negotiable Instruments Act, 1881. The petitioner has previously filed a petition under Section 311 of Cr.P.C. to recall PW.1 and the same was dismissed on 09.09.2021. Aggrieved over the said order, this Criminal Original Petition has been filed .

3. The learned counsel for the petitioner submitted that he could not cross-examine PW.1 effectively due to Covid pandemic and for that reason, he could not secure the relevant documents at that point of time; hence in the interest of justice one opportunity should be given.

4. However, the learned counsel for the respondent submitted that the petitioner is in the habit of filing petitions under Sec.311 of Cr.P.C. frequently, even though he was already given with opportunities to cross examine PW.1 on two occasions.

5. Heard the submissions made by either side learned counsel and perused the materials available on record.

6. On perusal of the order of the learned Magistrate, it is seen that PW.1 was cross-examined twice and after a lapse of three years, he had filed the petition to recall PW.1 for the purpose of further cross-examination. The learned Magistrate has also taken into consideration of the attitude of the petitioner in causing delay



CRL.O.P.No.19128 of 2021

and non suited him for the reliefs sought by him.

WEB COPY

7. The learned counsel for the petitioner requested the Court to grant him one last opportunity to recall PW.1, so that he could cross-examine PW.1 on the very same day. Even in this petition, the learned counsel for the petitioner failed to state about the nature of documents which were not available at the time when PW.1 was first cross examined. Even if he gets any documents and if they are admissible, they can be filed through the accused himself by seeking leave of the Court. Sufficient opportunity has been given to the accused and the accused had the pleasure for cross-examining PW.1 on two occasions.

8. The petitioner has now filed this petition after a lapse of three years. The learned trial Judge has rightly dismissed the petition, by observing the conduct of the petitioner as delay making tactics. Hence, I find no reason for interference.

Accordingly, this Criminal Original Petition is **dismissed**.

07.11.2022

Internet: Yes/No
jrs



WEB COPY



CRL.O.P.No.19128 of 2021

R.N.MANJULA, J.,

jrs

To
The Judicial Magistrate No.4, Salem.

Crl.O.P. No.19128 of 2021

07.11.2022