



Crl.O.P. No.24909 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRL.O.P No.24909 of 2022 and

CrI.M.P.No.15583 of 2022

Balasundaram

... Petitioner

Vs.

Subburayan

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to set aside the order passed in CrI.M.P.No.309/2022 dated 06.10.2022 in C.C.No.671/2020 on the file of the Judicial Magistrate-1, Namakkal.

For Petitioner : Mr.S.Sheik Ismail

ORDER

Challenging the order passed in CrI.M.P.No.309/2022 in C.C.No.671/2020 dated 06.10.2022 by the Judicial Magistrate-1, Namakkal, this Criminal Original Petition has been filed.

2. The learned counsel for the petitioner submitted that the petitioner



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was prosecuted by the respondent/complainant for the offence punishable under Section 138 of Negotiable Instruments Act and he filed an application before the Trial Court to recall the PW1/complainant for further cross examination, and it was dismissed. He further submitted that, fair chance has to be given to the petitioner to cross examine the PW1 to elucidate certain crucial points i.e., under what circumstances and for what purpose the cheque was issued and whether consideration has been transferred or not. Therefore, for the above said purpose, it is necessary to recall the PW1/complainant and for the same, the impugned order has to be set aside.

3. A perusal of the records shows that the petitioner is the sole respondent/accused in C.C.No.671 of 2020 on the file of the Judicial Magistrate-1, Namakkal and the respondent has prosecuted the petitioner for the offence punishable under Section 138 of Negotiable Instruments Act. During the course of Trial, initially, the petitioner has not cross examined the PW1. Subsequently, the petitioner had filed a petition in CMP No.884/2022 to recall the PW1/Complainant and to cross examine him. The above petition was allowed by the Trial Court on 19.04.2022 and thereafter,



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the case was periodically adjourned from 23.04.2022 to 28.06.2022.

However, on all these hearings, the petitioner has not cross examined the PW1. Hence, on 28.06.2022, Cross examination of PW1 was closed and the case was posted for defence side witness on 08.07.2022. On that day, again the petitioner had filed a petition in CMP No.1974/2022 to cross examine the PW1 and it was also allowed by the Trial Court on 22.07.2022. Thereafter, the petitioner cross examined the PW1 on 04.08.2022 and 16.08.2022 and the cross examination of PW1 was closed on 16.08.2022. Thereafter, the case was posted for defence side witness on 05.09.2022, however, since there was no representation on the side of the accused, defence side evidence was closed on 08.09.2022 and posted for argument on 13.09.2022. In such circumstances, the petitioner once again filed a petition to recall PW1. The Trial Court, dismissed the petition mainly on the ground that already fair chances have been given to the petitioner on many occasions to cross examine the PW1 and further, already the recall petitions were allowed on two occasions and the petitioner has also cross examined the complainant and there is no valid reason put forth to recall the PW1 once again. Therefore, this Court is of the view that after giving fair chances



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to the petitioner and by considering all the facts, the Trial Court has discussed the matter elaborately and has passed the reasoning order and hence, the same does not warrant any interference by this Court.

4. At this juncture, the learned counsel for the petitioner submitted that the case is posted today (14.10.2022) for judgment and hence the petitioner may be permitted to put forth his argument before the Trial Court on 17.10.2022.

5. Considering the request of the learned counsel for the petitioner, the Trial Court is directed permit the counsel for the petitioner to putforth is submissions on 17.10.2022.

6. With the above direction, this Criminal Original petition is dismissed. consequently, connected miscellaneous petition is closed.

14.10.2022

Note: Issue order copy on 14.10.2022
mst



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To

The Judicial Magistrate-I,
Namakkal.



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V.SIVAGNANAM, J.

mst

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