



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NOS.25774 & 25777 OF 2021

AND

CRL.M.P.NOS.14306 & 14314 OF 2021

A.Anbalagan

... Petitioner/
Accused in both Crl.O.Ps

Vs

M.Murugesan

... Respondent/
Complainant in both Crl.O.Ps

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 09.09.2021 made in C.M.P.Nos.1422 & 1421 of 2021 respectively in S.T.C.No.560 of 2018 on the file of Judicial Magistrate, Fast Track Court No.II, Erode.

For Petitioner : Mr.M.Vignesh
(in both Petitions)

COMMON ORDER

These Criminal Original Petitions have been filed to set aside the order dated 09.09.2021, made in C.M.P.Nos.1422 & 1421 of 2021, in S.T.C.No.560 of 2018, on the file of Judicial Magistrate, Fast Track Court No.II, Erode.

2. The petitioner is the accused in S.T.C.No.560 of 2018, on the file of Judicial Magistrate, Fast Track Court No.II, Erode, facing trial under Section 138 N.I.Act. The grievance of the petitioner is that the petitioner had earlier filed a petition under section 311 Cr.P.C., in C.M.P.No.1366 of 2020, for recalling and cross examining PW1. The trial Court had permitted the petitioner to recall and cross examine with a condition that the petitioner to pay a cost of Rs.500/- to the respondent on or before 08.04.2020. Thereafter, due to pandemic, Courts were not functioning properly and the



petitioner had also suffered Covid-19 and got admitted in the hospital and there was complete dislocation and hence, for non compliance of payment of costs, the petition was dismissed. After limping back to normalcy, again the petitioner had filed C.M.P.Nos. 1421 and 1422 of 2021, to reopen and recall PW1 for cross examination. The trial Court on 09.09.2021, dismissed the same, against which, the petitioner has come up with the present petitions.

3. The contention of the petitioner is that the trial Court does not dispute the petitioner getting affected by corona and taking treatment as In-patient, but, the duration is only disputed. He further submitted that there has been restricted functioning of the Courts due to the pandemic situation. The petitioner, due to his ill health, was unable to inform his counsel and there has been some miscommunication and finally suffered dismissal order. The petitioner submits that he is ready and willing to pay the cost of Rs.2,500/- to PW1 on his appearance. This cost of Rs.2500/- has to be mobilised with great difficulty and he would somehow manage and mobilise the said amount.

4. Considering the submissions and on a perusal of the lower Court order, it is seen that the petitioner was suffering from Covid-19. Further, during the relevant period, there was some restriction in the functioning of the lower Court. In view of the same and since the petitioner's fundamental right is being denied, I am inclined to set aside the order of the lower Court, permitting the petitioner to recall and further cross examine PW1, who is the complainant, who is regularly appearing before the trial Court. The petitioner shall not take any further time for any reason. The petitioner to pay a sum of Rs.2,500/- as cost to PW1 on his appearance before the Trial Court. The petitioner to cross examine PW1 without further delay preferably within a period of 15 days from the date of receipt of this order copy, ofcourse after normal functioning of the Courts.

5. Accordingly, these criminal original petitions are allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

sli



To

The Judicial Magistrate,
Fast Track Court No.II, Erode.

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CRL.O.P.Nos.25774 & 25777 of 2021
and
CrI.M.P.Nos.14306 & 14314 of 2021

GPL (CO)
RLP (31/01/2022)