



Crl.O.P.No.25972 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.O.P.No.25972 of 2022

and

Crl.M.P.No.16041 of 2022

M.Mahendran

... Petitioner

Vs.

G.Mithunkumar

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to set aside the order in C.M.P.No.3297 of 2022 in STC No.328 of 2017 dated 13.10.2022 passed by the learned Judicial Magistrate (Fast Track) at Poonamalle.

For Petitioner : Mr.S.Balasubramanian

ORDER

This Criminal Original Petition has been filed to set aside the order in C.M.P.No.3297 of 2022 in STC No.328 of 2017 dated 13.10.2022 passed by the learned Judicial Magistrate (Fast Track) at Poonamalle.



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2. The learned counsel for the petitioner submitted that the petitioner was prosecuted by the respondent/complainant for the offence punishable under Sections 138 & 142 (2) (a) of N.I.Act. After chief examination was over, the petitioner was not able to cross examine PW1. Hence, he filed a petition for recalling PW1 on 06.06.2018 for the purpose of cross examination and that was allowed by the learned Magistrate. But unfortunately, the petitioner was not able to cross examine PW1 and again, he filed another petition for recalling PW1, which was also allowed but due to non availability of the Judicial Officer, the witness PW1 was not cross examined. However, third application was filed by the petitioner in C.M.P.No.3297 of 2022, which was dismissed by the Trial Court on 13.10.2022, stating the reason that it is the third application, and also relying upon the judgment of Supreme Court in the case of ***“Jagadish Singh Khehar and another vs. Shiv Kumar Yadav”*** and another, reported in ***2016-1—L.W.(Crl.) 561***. Learned counsel for the petitioner seeks one more chance to recall PW1 for the purpose of cross examination. Hence, the present petition has been filed.

3. I have considered the matter in the light of the submission made by the learned counsel for the petitioner and perused the materials available on record.



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4. On perusal of records, reveals that the petitioner is an accused and the the respondent is the complainant. The complainant filed a private complaint against the petitioner for the offences punishable under Sections 138 & 142 (2)(a) of N.I.Act and the same was taken on file in STC.No.328 of 2017 pending on the file of the learned Judicial Magistrate (Fast Track Court), Poonamalle. A perusal of records, further seen that, on issuing summon, the accused appeared on Court and thereafter, PW1 was examined on 11.05.2018 and 10 documents were marked as Exs.P1 to 10. At that time, the accused did not cross examine PW1. Thereafter, the case was posted for defence evidence on 06.06.2018. The accused filed application under Section 311 of Cr.P.C for recalling PW1, which was allowed but the PW1 was not cross examined by the petitioner for one year. Therefore, the Trial Court closed the PW1 evidence on 04.06.2019 and posted for arguments. The petitioner again filed petition under Section 311 of Cr.P.C on 25.09.2019 and that petition was also allowed on 01.12.2021 with a condition that the petitioner should cross examine the witnesses without taking any adjournments, however, petitioner has not cross examined PW1 and therefore, the Trial Court closed the PW1's cross examination and posted for arguments on 12.10.2022. Thereafter, the petitioner filed third petition to recall PW1 in CMP 3297 of 2022 in STC No.328 of 2017,



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in which, the Trial Court observes that the petitioner was given sufficient opportunity to cross examine the witnesses. However, taking into consideration of the principles laid down by this Court in ***Karthikeyan and others Vs State the Hon'ble High Court Judicature at Madras***, reported in, ***2019-2-L.W.(Crl)153*** and another Judgment of the Supreme Court in “***Jagadish Singh Khehar and another vs. Shiv Kumar Yadav***” and another, reported in ***2016-1—L.W.(Crl.) 561*** and another judgment of Supreme Court in ***AG Vs.Sivakumar Yadav & Another***, reported in ***2016(1) LW (crls) 561***. By following the judgments, the Trial Court dismissed the petition and passed an impugned order.

5. On perusal of impugned order, I find no reason to interfere with the order passed by the Trial Court and I find no infirmity in the order passed by the Trial Court. The petitioner was sufficiently given time for cross examining the witnesses. Therefore, there is no bonafide on the part of the petitioner to recall PW1 for the purpose of cross examination. I find no merit in this petition. Hence, this Criminal Original Petition stands dismissed. Consequently, connected Criminal Miscellaneous Petition is closed.

28.10.2022



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V.SIVAGNANAM, J.

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