



CRL.O.P (MD) No.15947 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.09.2022

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P (MD) No.15947 of 2022

Nithya

... Petitioner/Accused

Vs.

S.Paulraj

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records relating to the order dated 17.08.2022 made in CrI.M.P.No.4153 of 2022 in C.C.No.446 of 2019 on the file of the Fast Track Judicial Magistrate, Srivilliputhur, Virudhunagar District and to set aside the same.

For Petitioner : Mr.M.Sankar

ORDER

This Criminal Original Petition has been filed to set aside the order, dated 17.08.2022 made in CrI.M.P.No.4153 of 2022 in C.C.No.446 of 2019 on the file of the learned Judicial Magistrate, Fast Track Court, Srivilliputhur, Virudhunagar District.

1/6



CRL.O.P (MD) No.15947 of 2022

2.The learned Counsel for the Petitioner submits that the Petitioner is an accused before the learned Judicial Magistrate, Fast Track Court, Srivilliputhur. The case arose out of offence punishable under Section 138 of Negotiable Instruments Act. The complainant was examined and documents were marked. During the pendency of the trial, the accused, as Petitioner, has filed a Petition under 311 of Cr.P.C., seeking evidence of the Petitioner. Before the Motor Accident Claims Tribunal, the respondent/complainant had stated that due to the accident, he had lost his income. As per his deposition in the year 2018, the Petitioner herein, as accused in C.C.No.446 of 2019 sought the said deposition from the learned Sub Judge, Srivilliputhur. Based on the deposition of the complainant as Petitioner in MCOP.No.11 of 2018, the accused in C.C.No.446 of 2019 filed Crl.M.P.No.4152 of 2022 seeking re-call of PW.1, that was dismissed by the learned Judicial Magistrate, Fast Track Court, Srivilliputhur. The learned single Judge, while hearing this Criminal Original Petition has sought remarks from the learned Judicial Magistrate, Fast Track Court (under Negotiable Instruments Act), Srivilliputhur. The remarks offered by the learned Judicial Magistrate, Fast Track Court (under Negotiable Instruments Act), Srivilliputhur states that the complainant was examined as PW.1 on



CRL.O.P (MD) No.15947 of 2022

20.11.2021 and documents were marked as Ex.P1 to Ex.P9. Subsequently, the case was adjourned several times on 13.12.2021, 21.12.2021,, 07.01.2022, 27.01.2022, 14.02.2022, 28.02.2022, 07.03.2022, 15.03.2022 and 29.03.2022. On 05.04.2022, Crl.M.P.No.586 of 2022 under Section 311 of Cr.P.C, to re-call PW.1 was filed and allowed. On 08.04.2022, PW.1 was cross examined in full and thereafter, it was posted for defence side evidence. This case is now pending at the stage of defence side evidence from 22.04.2022 to 28.04.2022. On 12.05.2022, D.W1 was examined and Ex.D1 to Ex.D3 were marked and it was posted for further defence side evidence from 26.05.2022. It was repeatedly adjourned from 02.06.2022 to 14.06.2022.

3.Only on 16.06.2022, D.W2 was examined and Ex.P10 was marked. Again, it was adjourned to 27.06.2022 for further defence side evidence. On 11.07.2022, D.W3 was examined and Ex.P11 was marked and Petition filed under Section 311 of Cr.P.C. to recall of PW.1 was posted for filing counter on 18.07.2022 and 02.08.2022. The Respondent/Complainant filed a counter in Crl.M.P.No.4153 of 2022 on 02.08.2022 and it was posted for enquiry on 10.08.2022. On 10.08.2022, enquiry heard from both sides and the said Petition was dismissed on 17.08.2022.



CRL.O.P (MD) No.15947 of 2022

4.The remarks offered by the learned Judicial (Magistrate Level), Fast Track Court (under Negotiable Instruments Act), clearly shows that the Petitioner herein as an accused had protracted the proceedings and filed this Petition under Section 311 of Cr.P.C. as an after thought. The well reasoned order of the learned Judicial Magistrate does not warrant any interference in the light of the reported ruling of the ***Hon'ble Supreme Court in the case of Vinod Kumar Vs. State of Punjab (In Criminal Appeal No.554 of 2012)***. The submission of the learned Counsel for the Petitioner seeking one time opportunity to cross examine P.W.1 by setting aside the order passed by the learned Judicial Magistrate in CrI.M.P.No. 4153 of 2022 in C.C.No.446 of 2019, does not warrant any interference.

5.Already, the Petitioner had been granted opportunity to cross examine the witnesses by filing of Petition under Section 311 of Cr.P.C. at earliest opportunity in CrI.M.P.No.586 of 2022.

6.In cases of this nature as an after thought at the whims and fancies of the accused, repeatedly filing of Petition under Section 311 of Cr.P.C cannot be allowed. Even though nature of the case under Section 138 of



CRL.O.P (MD) No.15947 of 2022

Negotiable Instruments Act is civil nature, the proceedings are under the Code of Criminal Procedure. Therefore, the Magistrate Court alone to conduct the trial and dispose of the case as per the provision of the Criminal Procedure Code. This Court exercising its extraordinary power under Section 482 of Cr.P.C cannot set aside the order, simply because the Petitioner who is an accused before the trial Court, had approached this Court seeking one time exemption. In view of the above discussion, this Petition has no merit.

7. Accordingly, this Criminal Original Petition stands dismissed. The learned Judicial Magistrate, Fast Track Court (under NI Act), Srivilliputhur, Virudhunagar District is directed to dispose of C.C.No.446 of 2019 within a period of four months from the date of receipt of a copy of this order. The Petitioner/accused shall co-operate with the disposal of the case. If the Petitioner/accused is absconding, the learned Judicial Magistrate can issue warrant. If the accused is produced, the accused shall be detained in Prison till the disposal of the case.

20.09.2022

Index: Yes/No
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5/6



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CRL.O.P (MD) No.15947 of 2022

SATHI KUMAR SUKUMARA KURUP, J.

vsd

To

- 1.The Judicial Magistrate,
Fast Track Court,
Srivilliputhur,
Virudhunagar District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

CRL.O.P (MD) No.15947 of 2022

20.09.2022