

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.09.2022

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

**CRL.O.P(MD)No.15589 of 2018
and
CRL.M.P(MD)No.6881 of 2018**

V.Suresh Babu

.. Petitioner/Respondent/
Accused

Vs.

Employee State Insurance Corporation,
Having its Regional Office at
No.143, Sterling Road, Chennai-600 034
Rep. by its Manager, ESI Corporation,
Local Office,
Kumbakonam.

.. Respondent/Petitioner/
Complainant

PRAYER:- Petition filed under Section 482 of Criminal Procedure Code,
against the order dated 10.07.2018 in Crl.M.P.No.6764 of 2018 in C.C.No.
731 of 2005 on the file of the Judicial Magistrate No.II, Kumbakonam.

For Petitioner : Ms.AL.Ganthimathi

For Respondent : Mr.P.Ganapathysamy

ORDER

This quash petition has been filed challenging the order passed by the trial Court allowing the application filed by the respondent Corporation under Section 311 Cr.P.C. for recalling P.W-1 and for marking additional documents.

2. The respondent has filed a private complaint against the petitioner for the alleged offence under Section 85(e) punishable under Section 85(ii) of the Employees' State Insurance Act, 1948. This complaint was made on the ground that the petitioner failed to submit certain returns in the relevant forms as mandated under the Act.

3. Heard Ms.AL.Ganthimathi, learned counsel for the petitioner and Mr.P.Ganapathysamy, learned counsel for the respondent.

4. The private complaint was filed in the year 2005. The respondent Corporation filed a petition under Section 311 Cr.P.C. on an earlier occasion to recall P.W-1 for the purpose of marking certain documents. This petition was contested by the petitioner and ultimately, it was dismissed by the Court below through an order dated 28.12.2017. Admittedly, this order has become

final and it was never put to challenge. The private complaint was at the stage of questioning under Section 313(1)(b) of Cr.P.C. and at that stage, the respondent corporation filed yet another petition under Section 311 Cr.P.C. to recall P.W-1 and to mark three documents. This petition came to be allowed by the Court below through an order dated 10.07.2018 and the said order has been put to challenge in this petition.

5. The only reason that has been assigned by the Court below is that in the earlier petition filed by the respondent Corporation, there was no mention with regard to the documents that were sought to be marked by recalling P.W-1 and whereas in the present petition, there is a specific reference to the documents that are sought to be marked by the respondent Corporation and hence, the present petition was entertained by the Court below. That apart, the Court below has further held that there is no bar in entertaining a petition under Section 311 Cr.P.C. in the interest of justice.

6. The Court below completely lost sight of one vital fact and that is that the respondent Corporation was casually filing petition under Section 311 Cr.P.C. one after the other. In the earlier petition, the respondent corporation had sought for re-calling P.W-1 to file certain documents.

Admittedly, this petition came to be dismissed. After nearly one year, when the proceedings were at its fag end, yet another petition came to be filed for the very same reason. Just because the respondent Corporation mentioned the relevant documents to be marked while filing the second petition, that does not mean that the scope of the second petition was different from the one which was filed earlier. A petition under Section 311 Cr.P.C. cannot be treated in a casual manner and it cannot be allowed to be filed one after the other by providing some extra information and whereas, the substance remaining the same.

7. It is true that the real test for the Court is to ensure that the ends of justice is met and therefore, the petition can be entertained at any stage. However, it should not become an instrument of harassment and it requires strict scrutiny to ensure that such petitions are not used as tools for prolonging the litigation.

8. The reason assigned by the Court below while allowing the petition is totally unsustainable and naming the documents to be marked by recalling P.W-1 did not make any substantial change from the earlier petition that was filed for the very same purpose. The earlier order passed by the Court below

was certainly a bar for maintaining the second petition, more particularly, since there was absolutely no change in circumstances whatsoever.

9. In view of the above discussion, this Court has absolutely no hesitation to interfere with the order passed by the Court below and accordingly, the order, dated 10.07.2018 made in Crl.M.P.No.6764 of 2018 in C.C.No.731 of 2005 on the file of the learned Judicial Magistrate No.II, Kumbakonam, is set aside.

10. In the result, this Criminal Original Petition is allowed and there shall be a direction to the learned Judicial Magistrate No.II, Kumbakonam, to dispose of C.C.No.731/2005 within a period of eight (8) weeks from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed.

12.09.2022

Index : Yes / No
Internet : Yes / No

PJL

To
The Judicial Magistrate No.II, Kumbakonam.

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N.ANAND VENKATESH,J.

PJL

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