



WEB COPY



CrI.O.P.No.12150 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2023

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

CrI.O.P.No.12150 of 2023 and
CrI.M.P.No.7362 of 2023

K.Moorthy

... Petitioner

Vs

R.Jagadeesan

... Respondent

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C. to set aside the order dated 04.05.2023 passed by the learned Judicial Magistrate, Mettupalayam, Coimbatore in Cr.M.P.No.264 of 2023 in C.C.No.111 of 2013 and consequently allow the same.

For Petitioner : Mr.L.Poovendra Perumal

For Respondent : Mr.Saigovindaraj

ORDER

This Criminal Original Petition has been filed to set aside the order dated 04.05.2023 passed by the learned Judicial Magistrate, Mettupalayam, Coimbatore in Cr.M.P.No.264 of 2023 in C.C.No.111 of 2013 and



Crl.O.P.No.12150 of 2023

consequently allow the same.

WEB COPY

2.The learned counsel for the petitioner submitted that petitioner is accused in C.C.No.111 of 2013 pending on the file of learned Judicial Magistrate, Mettupalayam. Petitioner filed Crl.M.P.No.264 of 2013 for re-opening the case for defence evidence for examining further witnesses. This petition was dismissed without giving opportunity to the petitioner to examine defence witnesses. Therefore, this petition.

3.The learned counsel for the respondent submitted that re-open petition was filed just to protract the proceedings. The learned trial Judge rightly dismissed the petition.

4.Heard the submission of learned counsel appearing for parties and perused the records.

5.It is seen from the order of learned Judicial Magistrate, Mettupalayam, in Cr.M.P.No.264 of 2023 that the case in C.C.No.111 of



Crl.O.P.No.12150 of 2023

2013 was instituted under Section 138 of Negotiable Instruments Act and still pending without result. It is seen from the order that accused appeared before the trial Court and examined under Section 251 Cr.P.C. on 27.05.2013. P.W.1's examination was completed in 2014 and petitioner/accused was examined under Section 313 Cr.P.C. on 22.12.2014. The case was pending for defence evidence from 16.01.2015 and pending till 26.08.2016 for defence evidence. At this stage, complaint was dismissed for non-appearance of the complainant. This Court does not understand when the case is pending for defence evidence, why the case had to be dismissed for non-appearance of the complainant. The dismissal *prima-facie* appears not in accordance with law.

6.However, the respondent filed Crl.A.No.436 of 2017 on the file of learned Principal District Sessions Judge, Coimbatore, and it was allowed on 02.01.2019 with a condition to dispose the case within a period of two months from the date of receipt of copy of the order. After restoring the case, trial Court issued notice to both the parties for their appearance on 27.05.2019. Petitioner instead on adducing defence evidence, filed petition



CrI.O.P.No.12150 of 2023

to recall the P.W.1 and that was allowed on the same day. But the case was adjourned to 02.08.2019, 11.10.2019, 22.11.2019, 07.03.2020, 20.03.2020, 20.05.2020, 29.01.2021, 03.02.2021. P.W.1 was not cross-examined on those dates. On 12.02.2021, a conditional order was passed for cross-examination of P.W.1, on 15.02.2021, P.W.1 was cross-examined only in part. Again, the case was adjourned to 19.02.2021, 10.03.2021, 19.03.2021, 24.03.2021, 26.03.2021, 07.04.2021, 15.04.2021 and 17.04.2021 for cross-examination of P.W.1. However, petitioner has not chosen to cross-examine P.W.1. On 21.04.2021, he further cross-examined P.W.1 in part and the case was adjourned till 18.05.2022 due to Covid-19.

7. On 18.05.2022, further cross of P.W.1 was adjourned on payment of costs. It appears that after various adjournments, P.W.1 was finally and completely cross-examined on 24.06.2022. Thereafter, case was adjourned for defence evidence on 16.08.2022, 30.08.2022 and 06.09.2022. Since, petitioner has not produced defence evidence, defense evidence was closed on 14.10.2022 and case was posted for arguments on 04.11.2022 and 14.11.2022. On 14.11.2022, complainant side argument was heard and



Crl.O.P.No.12150 of 2023

posted for accused/petitioner arguments on 16.11.2022. At that point of time, petitioner filed petition to re-open the case in Crl.M.P.No.1690 of 2022 and petition under Section 315 Cr.P.C in Crl.M.P.No.1691 of 2022. Both the petitions were allowed on 29.11.2022 and the case was posted for examination of accused on 01.12.2022. Petitioner was examined as D.W.1. and was adjourned to 08.12.2022 and D.W.1 was cross-examined. The case was adjourned for further D.W's on 28.12.2022. The case was pending from 28.12.2022, 12.01.2023 and 27.01.2023 for further defense evidence. However, petitioner has not produced any defense witness. Therefore, evidence was closed on 27.01.2023.

8.Again the petition for re-open was filed. It is also said that petitioner had not given the details of the witness(s) he is going to examine and importance of the examination.

9.The sequence of events that taken place from the institution of the case until now, shows that petitioner is deliberately delaying the proceedings and he successfully dragged the case in C.C.No.111 of 2013



Crl.O.P.No.12150 of 2023

from 2013, till now for the period of 10 years. His conduct shows that his only aim is to protract the proceedings. The learned Judicial Magistrate, Mettupalayam, considered every aspect and rightly dismissed the petition. This Court finds there is no merits in this petition. This petition has to be dismissed with costs. Therefore, this petition is dismissed with costs of Rs.5000 to the respondent. The learned Judicial Magistrate, Mettupalayam, is directed to dispose the main case within a period of two weeks from the date of receipt of copy of this order.

10. Accordingly, the Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

26.06.2023

Index: Yes/No
Speaking/Non speaking order
ep



WEB COPY



Crl.O.P.No.12150 of 2023

G.CHANDRASEKHARAN, J.

ep

To

1. Judicial Magistrate, Mettupalayam, Coimbatore
2. The Public Prosecutor,
High Court, Madras.

Crl.O.P.No.12150 of 2023 and
Crl.M.P.No.7362 of 2023



WEB COPY



Crl.O.P.No.12150 of 2023

26.06.2023