



CrI.O.P.No.22690 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :25.07.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.No.22690 of 2022

and

CrI.M.P.No.14547 of 2022

K.P.Ramesh

... Petitioner

Vs.

S.Lakshminarayana

... Respondent

Prayer : This Criminal Original Petition is filed under Section 482 of Cr.P.C. to set aside the order dated 30.06.2022 passed in CrI.M.P.No.808 of 2020 in S.T.C.No.218 of 2016 on the file of the Judicial Magistrate, Fast Track Court, Hosur.

For Petitioner : Mr.J.Pradeep

For Respondent : Mr.C.Samivel



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ORDER

This petition has been filed challenging the order passed by the Court below in Crl.M.P.No.808 of 2020 dated 30.06.2022 dismissing the application filed under Section 254(2) of Cr.P.C. to examine six witnesses on the side of the defence.

2.Heard Mr.J.Pradeep, learned counsel appearing for the petitioner and Mr.C.Samivel, learned counsel appearing for the respondent.

3.The respondent filed a complaint against the petitioner for the offence under Section 138 of Negotiable Instruments Act. This complaint was taken on file in the year 2016. The examination of witnesses on the side of the complainant was completed. The petitioner filed an application under Section 254(2) of Cr.P.C. to examine the witnesses on the side of the defence. In the application, the petitioner had given the list of six witnesses to be examined.

4.The Court below on considering the facts and circumstances of the



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case and on exercising its discretion under Section 254(2) of Cr.P.C., found that there is absolutely no reason to permit the petitioner to examine six witnesses on the side of the defence. Accordingly, the application was dismissed. Aggrieved by the same, this petition has been filed before this Court.

5.The learned counsel appearing for the petitioner submitted that the petitioner has to rebut the presumption under Section 139 of the Negotiable Instruments Act and hence, the list of witnesses must be examined on the side of the defence.

6.In the considered view of this Court, the proceedings under Section 138 of the Negotiable Instruments Act is in the nature of summary proceedings. It is seen from the records that the petitioner has cross examined P.W.1 in great detail. Most of the defence that was attempted to be put forth by the petitioner is available in the cross examination of P.W.1.

7.The Court below cannot mechanically permit the application filed



under Section 254(2) of Cr.P.C., wherein a list of witnesses are given. The rebuttal under Section 139 of the Negotiable Instruments Act is tested through preponderance of probabilities. Hence, the same can be done even by cross examining P.W.1. There is absolutely no reason as to why six to seven witnesses must be examined on the side of the petitioner. The order passed by the Court below does not suffer from any illegality or infirmity warranting interference of this Court under Section 482 of Cr.P.C.

8.In the light of the above discussion, the Court below is directed to give an opportunity to the petitioner to examine himself as a witness on the side of the defence. The respondent/complainant shall also cross examine the petitioner. This will sufficiently take care of the interest of the petitioner since the petitioner has already cross examined P.W.1 exhaustively.

9.The Court below after completion of the examination of the petitioner as a witness shall fix a date for final hearing and both sides shall make their submission and thereafter, final judgment can be passed by the



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Court below.

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10.This Criminal Original Petition stands disposed of with the direction to the learned Judicial Magistrate, Fast Track Court, Hosur to dispose of S.T.C.No.218 of 2016 within a period of two months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

25.07.2023

Index :Yes/No

Internet:Yes

Speaking Order/Non-speaking Order

cse

To

The Judicial Magistrate,
Fast Track Court, Hosur.

N.ANAND VENKATESH,J.



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