



WEB COPY

Crl.O.P.No.24183 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.10.2023

CORAM :

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.24183 of 2023

and

Crl.MP. No.16834 of 2023

Palanisamy

... Petitioner

-VS-

M.Ponnusamy

...Respondent

PRAYER : Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to set aside the order passed in Crl.M.P. No.1866 of 2023 in S.T.C. No.1100/2022 on the file of the learned Judicial Magistrate Court at Mettupalayam dated 01.09.2023.

For Petitioner : Mr.R.Venkatesh

ORDER

S.T.C. No.1100 of 2022 pending on the file of the learned Judicial Magistrate, Mettupalayam is in connection with a private complaint instituted under Section 138 of the Negotiable Instruments Act, 1881. P.W.1, the complainant, who was examined on 03.02.2023, was sought to be recalled and



cross examined by the accused and therefore, filed a petition on 10.05.2023, the same was allowed on 24.05.2023 and the case was posted on 14.06.2023 for cross examination of the witness. On that day, the accused was not able to cross examine P.W.1, since, learned counsel for the petitioner was not well. Therefore, the trial Court, recording the presence of P.W.1 closed the complainant side evidence and posted for defence side witness on 12.07.2023.

2. Then the petitioner again moved the Judicial Magistrate by filing a petition under Section 311 of Cr.P.C to reopen and recall of P.W.1. The trial Court after considering the rival submission, dismissed the second recall petition vide judgment dated 01.09.2023, which is impugned in this Criminal Original Petition.

3. The trial Court had dismissed the petition based on the following reasons, which is extracted below:

"... 5. The above main private complaint for the offence under Section 138 of Negotiable Instruments Act was filed by the respondent/complainant herein against the petitioner/accused herein and cognizance was taken on 24.03.2022.

6. The petitioner/accused appeared on summon on 01.07.2022 and copies furnished to him and on the same day the accusation explained to the accused, the accused denied the accusation and pleaded not guilty.

7. Then on 03.02.2023 Complainant examined himself as PW1, on that date the petitioner/accused herein failed to cross examine the PW1.

8. The petitioner was given opportunity to cross examine the PW1 on 04.03.2023, 13.04.2023, 05.05.2023, but the accused failed to utilize



the opportunity.

9. On 05.05.2023, PW1 cross is closed as accused side not ready to cross examine the PW1 and sufficient time already granted. Since the complainant side was having no further evidence, the complainant side evidence closed and the case posted for examination under Section 313(1)(b) Criminal Procedure Code on 10.05.2023.

10. On 10.05.2023, the petitioner/accused examined Criminal Procedure Code Section 313(1)(b) and denied the incriminating evidence as false and then the case was posted for DWs as on 10.05.2023.

11. On 10.05.2023, the petitioner/accused herein filed petitions to re-open the complainant side and to recall the PW1 for cross on the accuse side, the said petitions in Crl.M.P. No.1154 of 2023 and Crl.M.P. No.1155 of 2023 were allowed on 24.05.2023 with cost and the case was posted to 14.06.2023 for cross of PW1.

12. On 14.06.2023, since the accused side not ready for PW1 cross, the PW1 cross was closed again, as already sufficient time given and then the case posted for DWs as last chance on 12.07.2023.

13. On 12.07.2023, the petitioner/accused filed this petition to re-open the complainant's side evidence, along with another petition for recalling the PW1 for cross.

14. As discussed above, the petitioner/accused was given opportunity to cross examine the PW1 many times but, the petitioner/accused not cross examined the PW1. Again when previous re-open and recall petition in Crl.M.P. No.1154 of 2023 and Crl.M.P. No.1155 of 2023 was allowed and the petitioner/accused was given with an opportunity for PW1 cross, the petitioner/accused failed to cross examine the PW1, it shows that, the petitioner/accused purposely dragging on the case without cross examining the PW1.

15. Now, field this petition again to re-open the evidence of the complainant's side for the purpose of recalling the PW1 again, it is stated in the petition that, the counsel for the accused is unwell, but no medical certificate produced to show that, the counsel for the accused was unwell on that day, the absence of the medical certificate, the reason stated is not bonafide.....'

4. The learned counsel for the petitioner submitted that a valuable opportunity of discharging the burden of enforceable liability will be lost to the accused, if the complainant is not recalled. However, it is not the case whether the petitioner is deprived of his right to cross-examine P.W.1 but it is the



negligence or self deprivation of the petitioner utilising the opportunity of cross examination of P.W.1, inspite of affording an opportunity.

Dr.G.JAYACHANDRAN, J.

5. The cheque bounce case, for a sum of Rs.5 lakhs issued on 05.10.2021, is prolonged for two years and the complainant cannot be forced to repeatedly attend the Court for the convenience of the accused/petitioner. If at all, the petitioner/accused needs an opportunity to recall of P.W.1 and cross examine him, he shall deposit 10% of the cheque amount as a pre-condition to the credit of S.T.C. No.1100/2022 on the file of the learned Judicial Magistrate Court at Mettupalayam. On such deposit, a date may be fixed by the learned Judicial Magistrate for the petitioner/accused to cross examine P.W.1. On summons, if P.W.1 is present, the petitioner/accused, cross examine him on the same day or else he will loose the opportunity.

6. With this direction, this Original Petition is disposed of. Consequently, connected Miscellaneous Petition is closed.

20.10.2023

Index : Yes/No

Neutral Citation : Yes/No

rkp

To

1. The Judicial Magistrate Court at Mettupalayam.

<https://www.mhc.in.gov.in/judis>



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2. The Public Prosecutor,
Madras High Court, Madras.

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