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Crl.OP.No.14691 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.OP.No.14691 of 2024

and

Crl.MP.No.8970 of 2024

R.Dhancheizan

... Petitioner

Vs.

K.Murugan

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to set aside the order dated 06.06.2024 made in Crl.MP.No.32395 of 2024 in STC.No.2719 of 2021 on the file of the learned Metropolitan Magistrate, Fast Track Court-II, Allikulam, Chennai and set aside the same by allowing this Criminal Original Petition.

For Petitioner : Mr.P.Krishnan

ORDER

The petitioner herein is an accused in a complaint registered under Section 138 of Negotiable Instruments Act. STC.No.2719 of 2021 pending on the file of the learned Metropolitan Magistrate (Fast Track Court-II), Egmore, Chennai.

2. After examination of witnesses on the side of complainant and



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after the completion of questioning under Section 313 of Cr.P.C, the accused has thought fit to recall the complainant (P.W.1). The learned Judicial Magistrate has entertained that application and permitted the accused to cross-examine P.W.1 on 20.02.2024. On that day, the petitioner/accused has changed his counsel and sought time for cross examining P.W.1, the witness who was recalled. The trial has accommodated his request and adjourned the matter to 18.03.2024 and again on his request, further time granted to cross examine P.W.1, till 22.04.2024. On that day also, the complainant failed to cross examine the witness. Hence, the learned Judicial Magistrate has closed the prosecution side evidence and proceeded to the next stage. On the next date of hearing i.e., 22.05.2024, the counsel who took three adjournments to cross examine the witness found a novel way to protract the proceedings by filing an application under Section 151 of C.P.C to recall the same witness. The Court pointing out the error in citing civil procedure code, the provision meant for the inherent power of the civil Court, returned the petition.



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3. The Counsel instead of correcting the petition by quoting the appropriate provision of law under Criminal Procedure Code has represented the petition without correction. Hence, the petition filed under Section 151 Cr.P.C was dismissed. The present petition is filed under Section 482 of Cr.P.C filed to set aside the above dismissal order passed by the trial Court.

4. The petition to re-call witness been dismissed on two grounds. Firstly, inspite of adequate opportunity given to the complainant to cross-examine the witness who was recalled on his petition, the accused has not cross examined the witness. Therefore, the Court has proceeded to the next stage of the trial. Secondly, the second application for recalling the witness filed under Section 151 of C.P.C is apparently erroneous. Despite returning the petition to represent after correcting the pattent error, has not rectified error.

5. The trial Court has returned the petition pointing out the error in the petition to enable the counsel to represent the petition after making necessary correction. The learned Counsel had represented the petition without making any correction. The trial Court has recorded this as one



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of the reasons for dismissing the application.

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6. The petitioner, even after affording three opportunities, failed to cross examine the witness who was recalled and not able to file a petition under the appropriate statute and under appropriate section of law. Hence dismissal of the petition uphold. This Court finds no merit in this petition. Hence, this Criminal Original Petition is dismissed with the above observations. Consequently, the connected miscellaneous petition is closed.

Vv

24.06.2024

To

1. The Metropolitan Magistrate, Fast Track Court-II,
Allikulam, Chennai
2. The Public Prosecutor,
High Court of Madras,
Chennai.

Dr.G.JAYACHANDRAN,J.



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