



Crl.O.P.14787 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2024

CORAM

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.O.P.No.14787 of 2024
and Crl.M.P.No.9049 of 2024

Mohamed Yonus,
Proprietor of Sahara Fruit Traders,
Plot No.1027, Kumudham Nagar Extension,
Mugalivakkam,
Chennai - 600 125.

.... Petitioner

Versus

Origin ITFS Private Limited,
Rep. by its Vice President,
R.Karthikeyan,
Office at: 2/1, Dr.V.S.I.Estate,
Thiruvanmiyur, Chennai - 600 041.

.... Respondent

Prayer: The Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records of the order passed in Crl.M.P.No.1089 of 2024 in C.C.No.37 of 2022 dated 10.06.2024 on the file of the Judicial Magistrate, F.T.C. (Magisterial Level), Alandur.



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For Petitioner : Mr.B.Kannan

For Respondent : Mr.R.Harikrishnan

ORDER

The present Criminal Original Petition has been filed to call for the records of the order passed in Crl.M.P.No.1089 of 2024 in C.C.No.37 of 2022 dated 10.06.2024 on the file of the Judicial Magistrate, F.T.C. (Magisterial Level), Alandur.

2. On completion of examination of witnesses on 03.01.2023, the learned counsel for the accused made an endorsement as "No defence witness thereafter". Thereafter, the trial Court has proceeded further after hearing arguments of the counsel. After several adjournments, the case was posted for judgment on 28.05.2024. At that juncture, the petitioner herein has filed an application under Section 311 of Cr.P.C., to recall P.W.1 for further examination to enunciate certain facts in respect of Ex.P7. The said application was strongly opposed by the complainant.

3. The trial Court, after considering the facts and law of Section



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311 Cr.P.C, had observed that P.W.1 has been substantially examined in respect of Ex.P7 and the present application is filed belatedly on the date fixed for pronouncing the judgment. Therefore, there is no justification in the application. Hence, the application deserves to be dismissed and accordingly, dismissed.

4. The learned counsel appearing for the petitioner/accused submitted that for want of proper instructions, the previous counsel had made an endorsement as "no defence witness". But, when the matter was listed for arguments, he realised that certain facts ought to have been enunciated regarding Ex.P7 and witness to be confronted with contradiction found in Ex.P6 viz-a-viz Ex.P7. The learned counsel for the petitioner also submitted that no chance to be afforded to the accused person and it will not prejudice the complainant.

5. The learned counsel for the respondent / complainant



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submitted that the *bona fide* of the petitioner to file a petition to recall the complainant after 1 and 1/2 years and that too on the date of judgment smacks of *mala fides* and ulterior motive. The reason stated to recall the witness was also found in the petition and the trial Court has rightly recorded its reason for not allowing the petition to recall.

6. This Court has perused the impugned order and the relevant documents. As stated by the learned counsel for the respondent/complainant, the stage at which the witness was called, the reasons stated in the recall petition and opportunities afforded to the accused person to discharge his burden would go to show, the trial Court has afforded fair opportunities to the petitioner herein to defend his case, but, after posting the matter for arguments on 05.02.2024 on completion of recording evidence, the petitioner has not taken any steps immediately to file petition to recall P.W.1. He has sought adjournments and the case has been adjourned for the argument time-to-time from 05.02.2024 more specifically, the case has been adjourned for arguments on the following dates 05.02.2024, 04.03.2024 and 21.03.2024. On completion of the



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complainant's arguments, for defence arguments, it has been adjourned 04.04.2024, 18.04.2024 and 23.04.2024. Particularly, it is to be noted that after granting two adjournments, the trial Court has fixed 23.04.2024 as the date of argument on the side of defence and that day is mentioned as last chance. On that date, the accused counsel has not come forward to make his submissions. Hence, the case has been closed and posted for judgment on 28.05.2024. On that day, the petition to recall P.W.1 has been filed under Section 313 of Cr.P.C.

7. The conduct of the petitioner/accused as narrated above would clearly show that the present petition is filed to prevent the Court from passing judgment. As contended by the learned counsel for the respondent, the petition is filed with an ulterior motive, which has been rightly found and recorded by the Court below. The records indicate that the petitioner has not availed the opportunity granted to him and after the date of judgment was fixed, the petition is filed to recall P.W.1. Hence, the order of the trial Court dated 10.06.2024 rejecting the petition to recall P.W.1 in Crl.M.P.No.1089 of 2024 in C.C.No.37 of 2022 is confirmed.



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In the result, the Criminal Original Petition is dismissed.

Consequently, the connected Miscellaneous Petition is closed.

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To

The Judicial Magistrate, F.T.C. (Magisterial Level),
Alandur.



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DR.G. JAYACHANDRAN, J.

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