



CrI.O.P.(MD)No.10589 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 16.07.2024

CORAM :

THE HON'BLE MR.JUSTICE B.PUGALENDHI

CrI.OP(MD)No.10589 of 2024 and
CrI.MP(MD) No.7093 of 2024

Manoj Kumar

... Petitioner

Vs

N.Sekar

...Respondents

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records of the impugned order dated 22.06.2024 passed in the said Cr.M.P.No.3981 of 2024 in the main complaint in S.T.C.No.70 of 2018 on the file of Judicial Magistrate No.1, Fast Track Court at Magisterial Level, Madurai and set aside the same and permit the petitioner to lead evidence.

For Petitioner : Mr.S.Loganathan

ORDER

The petitioner/accused in STC No.70 of 2018 has filed this Criminal Original Petition to set aside the order passed by the learned Judicial Magistrate No.I, FTC Court (Magisterial level) in Cr.M.P.No. 3981 of 2024, dated 22.06.2024.



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2.The petitioner/accused has filed an application under Section 311 of Cr.P.C to re-open the defence witness, for adducing evidence on behalf of him and the same was dismissed by the trial Court on the ground that the defence side evidence was closed on 04.06.2019 and the application has been filed belatedly.

3.The learned counsel appearing for the petitioner submits that the complainant was not available for cross-examination and therefore, the prosecution evidence was closed and it was posted for defence evidence. In the year 2019, the petitioner was not inclined to open the evidence as he has not cross examined PW1/the complainant and therefore, the defence side evidence was closed at that time. Thereafter, the case was re-opened at the instance of the complainant for cross examination of PW 1. Accordingly, PW 1 was cross examined on 06.04.2024 and thereafter, this application was filed on 26.04.2024. The learned Magistrate has dismissed the application on 12.06.2024 by referring the endorsement made in the Diary that the defence was closed on 04.06.2019. According to the petitioner, on 04.06.2019, the Court has closed the defence side evidence and the petitioner has not made any endorsement. He also submits that after the evidence on 06.04.2024,



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questioning under Section 313 of Cr.P.C. was framed. Thereafter, the petitioner has not been provided with an opportunity.

4.This Court considered the submissions made by the learned counsel for the petitioner and also perused the materials placed on record.

5.Perusal of the records shows that the learned Magistrate has simply dismissed the application filed by this petitioner under Section 311 of Cr.P.C, by recording that on 04.06.2019, the defence side evidence was closed. The learned Magistrate has failed to mention about the reopening of the prosecution evidence and the examination of PW 1 on 06.04.2024 and questioning under Section 313 of Cr.P.C, after 04.06.2019. When questioning under Section 313 of Cr.P.C was made on 06.04.2024, in all fairness, the learned Magistrate ought to have provided an opportunity to the petitioner to adduce his side evidence. However, it was not done so.

6.In view of the above, this Court is inclined to allow this petition. Accordingly, this Criminal Original Petition is allowed. The



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Impugned order passed by the learned Judicial Magistrate No.1, Fast Track Court at Magisterial Level, Madurai, dated 22.06.2024 is hereby set aside and the application filed by the petitioner in Cr.M.P.No.3981 of 2024 in S.T.C.No.70 of 2018, for re-opening of defence witness is allowed. Consequently, connected Miscellaneous Petition is closed.

16.07.2024

NCC : Yes/No
Index : Yes/No
Internet:Yes
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B.PUGALENDHI,J

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Order made in
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CrI.MP(MD) No.7093 of 2024

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