

IN THE COURT OF THE JUDICIAL MAGISTRATE, FAST TRACK COURT, HOSUR

**Present: Tmt.V.PARKAVI, B.A., B.L.,L.L.M.,
Judicial Magistrate, Fast Track Court,
Hosur.**

Thursday, the 24th day of October 2024

Crl.M.P. Nos. 1407 and 1408 of 2024 in S.T.C. No. 216 of 2017

R.Asokan

... Petitioner/Accused

/versus/

Senthil Kumar

... Respondent/Complainant

This petition is coming as on 24.10.2024 for final hearing before me in the presence of Mr.G.Gowrishkumar Advocate counsel for Petitioner/Accused and of Mr.A.Sathyannarayanan counsel for the Respondent/Complainant and upon hearing both sides and after perusing the records and having stood over for considering till this day. This court passed the following: -

COMMON ORDER

1) Heard both side. Records perused.

2) The main case was filed by the petitioner/accused herein against the respondent/complainant for the offense u/s.138 of NI Act. The main case was posted for Evidence. At this juncture, the petitioner/accused has filed the above Crl.M.Ps for the reliefs belows:

a) Crl.M.P. Nos:1407 and 1408/2024-

The petitioner/complainant stated that the complaint was examined as PW1 and cross examined by the accused side and at the time of cross examination of PW1, some important facts which are related to issues in this case are not questioned inadvertently. To establish the real facts in issue of this case, it is necessary to be further cross examined the PW1 on the accused side. Hence it is necessary to reopen the complainant side evidence for further cross

examination on the accused side, otherwise it will create great hardship to the accused. Hence prayed to allow this petition.

3. Contentions of the respondent in brief for both the applications:

The respondent contended that the averments in the petition filed in the Re-open petition is neither maintainable either in law or on fact and liable to be dismissed. The respondent contended that there is no specific averments mentioned in the petition except stating some important fact which are related to issue in this case. The respondent contended that the petitioner was given several opportunities for cross examination of the respondent/complainant from 29.08.2019 and having taken several adjournments the respondent was cross examined fully on 31.10.2019. The respondent contended that the respondent has examined the Bank Manager as PW No.2 on 08.11.2019 and he was cross examined on the same day.

The respondent contended that the petitioner was questioned by this Hon'ble court u/s 313 (i) (b) on 12.11.2019 and that the petitioner has not raised any objection or pray for cross examination stating that, some important fact which are related to issue in this case was left out. The respondent contended that when this Hon'ble court was pleased to post the above case for Deference side witness the petitioner absconded from the eye of law from the year 2019 to 2024 for the last 5 years and being in the Town the petitioner was evading the court of law and when finally the Nonailable warrant was taken for execution he had surrendered before this Hon'ble court on 02.09.2024. The respondent contended that the petitioner was given maximum privileges and he is not a law binding citizen not only cheated the respondent but also not respected the orders of this Hon'ble court.

The respondent contended that this petition is filed without sort of any specific reason after 5 years and the case is already 7 years pending case and with this sort of petition the petitioner is trying to drag the proceeding and wasting the time of this Hon'ble court. Therefore, it is most humbly prayed that this Hon'ble court may be pleased to dismiss the petition filed u/s 311 Cr.P.C to recall the PW No.1 for further cross examination in the interest of justice and this render justice. Hence prayed to dismissed the petition.

4) Now the point to be decided is, whether the present petitions are to be allowed or not?

5) Both side heard. Records perused. It is seen from the records, On 31.10.2019 itself PW1 was fully cross examined by the defence side. Further on perusal of records on 12.11.2019 itself Sec 313 (i) (b) of Cr.P.C questioning explained to the Petitioner/accused and posted for DWs and on 25.11.2019 Non bailable warrant issued against the petitioner/accused. Further the case was pending in the stage of Non bailable warrant from 25.11.2019 to 02.09.2024 for 5 years and the petitioner on 02.09.2024 voluntary surrendered and filed surrender, re-call petitions which are allowed on payment of cost.

6) Further on perusal of 1st questioning, cross of PW1 and 313 (i) (b) questioning the petitioner took defence as he did not receive any amount from the complainant and he issued 2 blank cheques for security purpose while business dealing with the complainant. Now this petitioner filed this present applications to re-call the PW1 for cross examination and there is no specific reason or specific defence mentioned in the petition for what purpose re-call of PW1 is necessary.

7) Our apex court recently in AG Vs Shiv Kumar Yadav & another, reported in 2016(2)SCC 402. This court deems fit to extract the relevant wordings of the Hon'ble Apex court: “ mere observation that recall was necessary for ensuring fair trial is not enough unless there are tangible reasons to show how fair trial suffered without recall recall is not a matter of course and the discretion given to the court has to be exercised judiciously to prevent failure of justice and not arbitrarily”. But in this case there is no valid reasons adduced in the present petition to reopen and recall for examination of PW1.

8) Further the petitioner didn't mention any vaild reasons why he didn't utilized the earlier opportunities and prolong the case for 5 years. This court thinks that the petitioner simply filed these petitions to drag the case and there is no merit in these petitions.

9) If this type of attitude is left not condemned, this court could never complete a single case as every one would file the petitions just like that. It is to be noted that, this court is flooded with cases and by filing these applications without a valid reason the petitioner had consumed much precious time of this court which could be usefully spent on the other pending cases.

Hence, this court is of the considered opinion that CrI.M.P.Nos.1407 and 1408/2024 are deserved to be dismissed and it is ordered accordingly.

10) Hence for the above reasons this court is of the considered view that both the petitions are dismissed.

Directly typed by me, corrected and pronounced by me in Open Court this the 24th day of October 2024.

S/d.Tmt.V.Parkavi,B.A.,B.L.,L.L.M.,
Judicial Magistrate,
Fast Track Court, Hosur.