

**IN THE COURT OF THE HON'BLE JUDICIAL MAGISTRATE,
(FAST TRACK COURT), OMALUR**
Present: **Thiru. M.A. SUVEDHARANYAN, B.A., B.L., (Hons)**
Judicial Magistrate, (Fast Track Court at Magisterial Level), Omalur.
MONDAY this the 23rd DAY OF NOVEMBER 2020
CMP.No.230/2020
In
STC.No.49/2018

Arun

... Petitioner/ Accused

/Vs/

Mohanraj

...Respondent/Complainant

This petition came before me for final hearing on 23.11.2020 in the presence of Tr. G. Ilayaraja, Advocate for the Petitioner /Accused and Tr. R. Mohankumar, P. Thangabalu Advocates for the Respondent / Complainant and after perusing the materials on record and hearing arguments of both sides, this court passed the following:

//ORDER//

1.The concise of Petitioner/Accused's Application:-

(i) The petitioner submits that the main case is posted for cross examination of PW1 on 19.10.2020. The petitioner herein was unable to cross examine the PW1 on that day due to his inability to appear before this court and to instruct his counsel because of Covid – 19 pandemic situation. He further submitted that due to non availability of some documents and essential particulars, he was unable to cross examine the PW1 on 04.11.2020 and hence the cross examination of PW1 was closed by this court. The petitioner would be suffered seriously if this petition is not allowed. He ended up with a prayer to allow the application to attain the just decision in the case.

2.The Respondent's counter in brief:-

The respondent contested the petition by submitting that the main case has been pending for three years. The petitioner has been not appearing in the court proceedings. The respondent further submitted that the petitioner wantonly defaulted in cross examining the PW1 for protracting the proceedings. Now this petition is opted without any valid reasons. He ends up with the prayer that the petition is to be dismissed with heavy costs.

3. The moot point to be determined is whether there is any ground to allow the application filed U/sec. 311 of Crpc for recalling the PW1 for cross examination, at this stage?

4. The petitioner argued that, the petitioner was unable to cross examine the PW1 on 04.11.2020 due to non availability of some documents and essential particulars. The petitioner would be suffered seriously if this petition is not allowed. The cross examination of PW1 is essential to reach just decision in this case.
5. The respondent argued that this petition is filed with malafide intention to drag on the proceedings. The petitioner who has been absent in the previous court proceedings has willfully defaulted in cross examining the PW1.
6. This court on careful perusal of petition, counter statement and available court records and upon hearing the arguments of both sides, noted that the documents and essential particulars, which the petitioner stated in his petition is not mentioned in this petition as well as in argument. The petitioner merely stated that some documents are not available due to which he is unable to cross examine the PW1.
7. This court also takes the fact in to consideration that this case has been pending for three years.
8. Though the petitioner merely stated that some documents are not available, this court views that the cross examination of PW1 is just and necessary and inevitable for reaching the just decision in the instant case. Sans rendering opportunity to the petitioner / accused to cross examine the PW1, this court would be not capable in reaching the just decision. Hence this court, having in mind, the principles of natural justice and for the purpose of reaching the just and proper decision, views that an opportunity to be given to the petitioner / accused.
9. In the result, this court **allows the application with cost of Rs. 100/-** (One Hundred rupees only) which is to be paid towards the Legal Services Authority, Omalur on or before 30.11.2020 and in default, this petition shall automatically stands dismissed.

Dictated by me, typed by typist, taken print out, verified and corrected by me and pronounced by me in the open court, this 23rd day of November 2020.

/Sd/ M. A. Suvedharanyan,
Judicial Magistrate,
Fast Track Court, Omalur.