

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.07.2016

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THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.13967 of 2016

N.Lalitha .. Petitioner

Vs

N.Kamalapathy .. Respondent

Criminal Original Petition filed under Section 482 Cr.P.C., to direct the Judicial Magistrate No.1, Poonamallee to receive the petition filed under section 310 of Cr.P.C. and to number it and to visit and inspect the place where the Pawn Broker Shop is situated for ascertaining and to appreciate the evidence adduced by the respondent at the time of enquiry and cross examination in M.C.No.24 of 2012 now re-numbered as M.C.No.11 of 2015 on the file of the Judicial Magistrate No.1 Poonammallee.

For Petitioner : Mr.M.Arumugam

O R D E R

This petition has been filed to direct the learned Judicial Magistrate No.1, Poonamallee to receive the petition filed under section 310 of Cr.P.C. and to number it and to visit and inspect the place where the Pawn Broker Shop is situated for ascertaining and to appreciate the evidence adduced by the respondent at the time of enquiry and cross examination in M.C.No.24 of 2012 now re-numbered as M.C.No.11 of 2015 on the file of the Judicial Magistrate Court No.1, Poonammallee.

2. Heard the learned counsel for the petitioner and perused the materials placed on record.

3. For the sake of convenience, the parties will be referred to by their name. Lalitha filed a petition under Section 125 Cr.P.C. for maintenance against her son Kamalapathy before the learned Judicial Magistrate-II, Poonamallee and the learned Magistrate, by order dated 19.01.2015 in M.C.No.24 of 2012, awarded maintenance of Rs.16,000/- per month payable by Kamalapathy to Lalitha. Kamalapathy filed C.R.P.No.1 of 2015 before the Principal

Sessions Judge, who by order dated 12.08.2015 has set aside the maintenance ordered by the trial Court and has remanded back the matter to the trial Court, for the trial Court to decide, as to who is running the pawn broker shop that was in question. At that juncture, Lalitha filed a petition purportedly under Section 310 Cr.P.C. asking the Magistrate to come to the pawn broker shop for spot inspection and the learned Magistrate appears to have returned the petition. Aggrieved by which, Lalitha is before this Court.

4. Mr.Arumugam, learned counsel appearing for Lalitha contended that spot inspection is essential, in order to find out as to who is running the pawn broker shop. That apart, he contended that the learned Magistrate even refused to receive the petition.

5. In the considered opinion of this Court, Section 310 Cr.P.C. is not intended to serve such purposes. The very idea of Section 310 Cr.P.C. which is a plenary power given to any Court to visit the place of occurrence, after due notice to both parties, in order to understand the evidence on record. In a dispute under Section 125 Cr.P.C., such spot inspection is not at all required, inasmuch as, the learned Magistrate cannot give a finding by visiting the shop that, so and so is running the business, which is beyond the ken of the trial Judge. That apart, the learned Magistrate cannot be faulted for returning the petition, inasmuch as, a petition under Section 310 Cr.P.C. cannot be maintained in the facts and circumstances of the present case.

6. In the result, this petition is devoid of merits and stands dismissed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.1,
Poonamallee.

2.The Public Prosecutor,
High Court, Madras.

CRL.OP.No.13967 of 2016

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