



## BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 08.03.2017

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL O.P. (MD) No.566 of 2017, 567/2017

&amp;

CRL MP(MD) No.518 of 2017

P.V.Ramasubramaniam ... Petitioner in both  
petitions/Petitioner/Accused  
Vs

1.Geetharamani

2.P.V.Ramachandraraja ... Respondents in  
both petitions/Respondent/Complainant

**Prayer:** These Criminal Petitions filed under Article 482 of the Constitution of India, praying to call for the records pertaining to the order passed by the Learned Judicial Magistrate, Rajapalayam in Cr.M.P.Nos.1319 and 1320 of 2016 in C.C.No.367 of 2013 order dated 21.10.2016.

For Petitioner : Mr.K.Gokul

For Respondents : Mr.G.Marimuthu(both op)

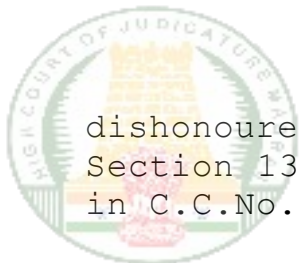
**ORDER**

These Petitions have been filed to set aside the order dated 21.10.2016 in Cr.M.P.No.1319, 1320 of 2016 in C.C.No.367 of 2013 passed by the learned Judicial Magistrate, Rajapalayam.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

3.A.V.Ramachandraraja filed C.C.No.367 of 2013 before the Judicial Magistrate, Rajapalayam against P.V.Ramasubramaniam/petitioner herein for offence under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the Act').

4.It is the case of Ramachandraraja that Ramasubramaniam (accused) has borrowed a sum of Rs.2 lakhs on 15.02.2013 and in discharge of the said liability, he had issued a cheque dated 15.06.2013, which when presented by Ramachandraraja was



dishonoured. After complying with the other requirements under Section 138 of the Act, Ramachandraraja launched the prosecution in C.C.No.367/2017 as stated above.

5. Ramasubramaniyaraja (accused) appeared before the Trial Court and Pleaded not guilty. Ramachandraraja was examined as P.W.1 and several documents were marked. He was submitted to cross examination by Ramasubramaniyaraja (accused) exhaustively. Thereafter Ramasubramaniyaraja (accused) was questioned under section 313 Cr.P.C. and the matter was posted for examination of the defence witnesses. At that stage, Ramachandra Raja died. His Widow Geetha Ramani filed a substitution application to prosecute C.C.No.367/2013, which was allowed by the trial Court. Thereafter Ramasubramaniyaraja (accused) has filed two petitions, namely CrI.M.P Nos.1319 and 1320/2016 under section 311 Cr.P.C. and under section 91 Cr.P.C. respectively for the purpose of cross examining Geetha Ramani and for production of certain documents, which were dismissed by the trial Court on 21.10.2016. Challenging which, Ramasubramaniraja is before this Court.

6. Mr.K.Gokul, learned counsel for the petitioner, submitted that Ramachandraraja/PW1 in his evidence appears to have made some admissions and in order to contradict the same, the accused had filed the aforesaid petitions for cross examining Geetha Ramani and for production of certain documents.

7. Mr.G.Marimuthu, learned counsel for the respondent, contraverting the allegations.

8. This Court gave its anxious considerations to the rival submissions.

9. It is trite that a witness can be cross examined only if he/she is examined in chief. In this case, Geetha Ramani had stepped into the shoes of her husband as complainant, after his death, in order to proceed with the prosecution in C.C.No.367/2013. In fact, Ramachandraraja was exhaustively cross examined by the accused during trial. Some of the documents which, the accused wants Geetha Ramani to produce are indeed no relevant for the just decision of the case.

10. In **State of Orissa v. Devendranath Pathi** reported in **(2004) AIR SCW 6813**, the Hon'ble Supreme Court has stated that a petition under Section 91 Cr.P.C. cannot be filed for making a roving enquiry. Under such circumstances, for the alleged admissions made by Ramachandraraja, his widow would step into his shoes as complainant may not be either called as a defence witness or only for the purpose of cross examination. If Geetha Ramani examined herself in chief, it is always open to the petitioner to cross examine her and not otherwise.



11. In the result, these petitions are devoid of merits and accordingly, the criminal original Petition are dismissed. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AD-II)

/True Copy/

Sub Assistant Registrar

**To**

The Judicial Magistrate,  
Rajapalayam.

+2cc to M/s.G.MARIMUTHU Advocate in SR. No.13374,13375

+2cc to M/s. K.GOKUL Advocate in SR. No.13402,13403

TA/RR/

JS/JC/10.04.2017/3P-6C

**Crl.O.P. (MD) No.566 of 2017**  
**08.03.2017**