

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 14.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR**CRL.O.P. (MD)No.8157 of 2017****and****CrI.M.P. (MD)No.5534 of 2017**

K.Raja Singh

: Petitioner

-Vs-

T.Devaraj

: Respondent

PRAYER: Criminal Original petition filed under Section 482 of Criminal Procedure Code, praying to call for the records pertaining to the order passed in C.M.P.No.2055 of 2017 in S.T.C.No.444 of 2016, on the file of the Judicial Magistrate, Padmanabhapuram, dated 31.05.2016, and set aside the same.

For Petitioner : Mr.C.K.M.Appaji

For Respondent : Mr.R.Russel Raj

O R D E R

This petition is filed to set aside the order, made in C.M.P.No.2055 of 2017 in S.T.C.No.444 of 2016, on the file of the Judicial Magistrate, Padmanabhapuram.

2.It is not in dispute that the petitioner is the accused in S.T.C.No.444 of 2016, on the file of the Judicial Magistrate, Padmanabhapuram and that the complaint was given under Section 138 of the Negotiable Instruments Act. Originally, before the lower Court P.W.1 was examined on 01.12.2015. However, due to the transfer of the matter from the Judicial Magistrate, Kuzhithurai to Judicial Magistrate, Padmanabhapuram, the bundle was received by the Judicial Magistrate, Padmanabhapuram, only on 17.08.2016. It was thereafter, the complaint was examined as P.W.1 on 16.05.2017. Immediately thereafter, it appears that the petitioner preferred an application under Section 311 of Criminal Procedure Code on 25.05.2017 to recall and cross-examine P.W.1. This application was dismissed by the Trial Court and therefore, the present Criminal Original Petition is filed.



3. Having regard to settled principles and scope of the power under Section 311 of Criminal Procedure Code reiterated by this Court and the Hon'ble Supreme Court, this Court is of the view that the petitioner should be given a reasonable opportunity and denial of such opportunity would cause more prejudice to the petitioner. Hence, this Criminal Original Petition is allowed and the order passed by the Judicial Magistrate, Padmanabhapuram in C.M.P.No.2055 of 2017 in S.T.C.No.444 of 2016 is set aside. As a result, the petition filed by the petitioner under Section 311 of Criminal Procedure Code, in C.M.P.No.2055 of 2017 in S.T.C.No.444 of 2016, on the file of the Judicial Magistrate, Padmanabhapuram, stands allowed subject to terms that the petitioner shall deposit 25% of the amount to the credit of the proceedings within a period of four weeks from the date of receipt of a copy of this order. The petitioner shall also avail the opportunity of cross-examining P.W.1 on the date, when the witness appears before the Court without seeking any further adjournment. Consequently, the connected Criminal Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

+1cc to M/S. C.K.M.APPAJI, Advocate, SR.No.79317.

CRL.O.P. (MD) No.8157 of 2017
14.09.2017

IA / SRM

SDS/SV:MMS/SAR 1/04.10.2017/2P/2C