

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 15 .02.2017****CORAM:****THE HON'BLE MR.JUSTICE G.CHOCKALINGAM****Cr1.O.P.(MD)No.23190 of 2016****and****Cr1.M.P(MD)No.12195 of 2016**

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S.Soundhirapandian

:Petitioner/Accused

Vs.

Kottaisamy

: Respondent/Complainant

Prayer: This petition is filed under Section 482 of Cr.P.C., to call for the records relating to the order in Cr.M.P.No.1649 of 2016 in S.T.C.No.339 of 2016 on the file of the Judicial Magistrate, Devakkottai and set aside the same and pass such further or other orders.

For Petitioner

: Mr.M.Ajmal Khan

For Respondent

: Mr.T.Amjed Khan
for Mrs.A.S.Rajeswari**O R D E R**

This petition is filed to call for the records relating to the order in Cr.M.P.No.1649 of 2016 in S.T.C.No.339 of 2016 on the file of the Judicial Magistrate, Devakkottai and to set aside the same.

2.The learned counsel appearing for the petitioner would submit that the petitioner has filed petition under Section 311 of Cr.P.C to recall PW1/Complainant for cross examination, but the trial court, without any proper reason, has simply dismissed the petition on the ground that the petitioner is prolonging the trial and that the petitioner wants to cross examine PW1 on the strength of the reply notice sent by him, as the earlier counsel has not questioned to that effect and that in the reply notice, the petitioner has taken the main defence that the loan amount has already been settled, but the respondent has not returned back the cheque issued by the petitioner. Hence, he prayed that the order passed by the trial court has to be set aside and this petition has to be allowed.



3. The learned counsel appearing for the respondent would contend that the petitioner was already granted sufficient time to cross examine PW1, but he has not availed the opportunity and only to drag on the proceedings, the present petition has been filed. Hence, he prayed for the dismissal of the petition.

4. Heard both sides and perused the materials available on record.

5. It is seen from the records that PW1/complainant was examined in chief on 09.10.2014 and thereafter, he was not cross examined for several hearings by the petitioner and hence, it was closed on 14.12.2014 and thereafter, the recall petition filed by the petitioner was allowed on 27.05.2015 and the respondent/complainant was cross examined at length including the aspect of reply and theory of defence on 08.06.2015 and when the case is posted for defence evidence, this petition is filed on 04.05.2016 with an intention to drag on the proceedings. The trial court dismissed the recall petition on 21.11.2016 and against which, the present petition is filed. Admittedly, the complaint was filed under Section 138 of Negotiable Instruments Act for the dishonour of a cheque of Rs.1,44,000/-.

6. In view of the above circumstances, this court is of the considered view that in the interest of justice, the petitioner may be given one more opportunity with some conditions.

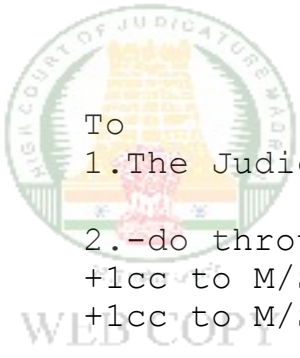
7. In the result, this petition is **allowed** on condition that the petitioner shall deposit a sum of Rs.1,00,000/- [Rupees One lakhs only] before the trial court on or before 22.02.2017, failing which the petition shall stand dismissed automatically without further reference to this court. On such deposit is being made by the petitioner within the stipulated time, the trial court shall recall PW1 for the purpose of cross examination and post the case in STC No.339 of 2016 on day to day basis and dispose of the same, purely on merits and in accordance with law, within a period of three weeks from the date of the closure of the evidence of PW1 and report the same to the Registry without fail. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar



To

1.The Judicial Magistrate,Devakottai.

2.-do throu- The Chief Judicial Magistrate,Sivagangai.

+1cc to M/S.A.S.Rajeswari,Advocate,SR.8418

+1cc to M/S.C.Vakeeswaran,Advocate,SR.8453

Cr1.O.P.(MD)No.23190 of 2016
15.02.2017

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