

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2018

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.No.3616 of 2018

and

CRL.MP.No.1634 of 2018

- 1.M/s.Sujana Universal Industries Ltd.
41 Nagarjuna Hills,
Punjabgutta, Hyderabad, Telungana- 500 082,
Represented by its Managing Director.
- 2.G.Srinivasa Raju
No.405, White House,
H.No.8-2-674/2/2A,
Road No. 3, Banjara Hills,
Hyderabad, Telengana - 500 034.
- 3.S.Hanumantha Rao
No.68-3-897/4,
Nagarjuna Nagar Colony,
Hyderabad, Telengana - 500 073.
- 4.K.Srinivasa Rao
No.302-5, Hreyas 6-3-1238,
B/14, Asif Avenue, Rahbhawan Road,
Hyderabad, Telengana- 500 052. ... Petitioners

Vs.

UCO Bank,
International Banking Branch,
III Floor, 328, Thambu Chetty Street,
Chennai- 600 001.
Represented by its Chief Manager ...Respondent

PRAYER: This Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records and set aside the order dated 09.01.2018 passed in Crl.M.P.No.9667 of 2017 in C.C.No.835 of 2016 on the file of learned Metropolitan Magistrate, Fast Track Court IV, George Town, Chennai and direct the trial Court to recall the PW1 for cross examination.

For Petitioners	: Mr.G.Ravikumar
For Respondent	: Mr.R.Selvakumar

O R D E R

This Criminal Original petition has been filed by the petitioners, being aggrieved by the order of the Court below, dismissing the application filed by the petitioners to recall and cross examine PW.1.

2.The petitioners are facing trial before the Court below for the offence punishable under Section 138 of the Negotiable Instruments Act. Earlier, when a quash petition was filed before this Court, while dismissing the said quash petition, this Court gave the following directions.

"After the orders were pronounced, the learned counsel for the petitioners submitted that the petitioners 3 and 4 are aged persons and their presence before the Trial Court may be dispensed with.

2.Accepting the said submission of the learned counsel for the petitioners, the petitioners 2,3 and 4 are directed to appear before the Magistrate concerned and on their appearance, they shall be released on bail by the Magistrate under Section 436 Cr.P.C. On the same day on they furnishing a bond for Rs.5,000/- with two sureties (common sureties). Thereafter, the petitioners 3 and 4 are directed to be present for receiving the charge sheet, for answering the charge at the time of questioning under Section 313, Cr.P.C. and at the time of passing judgment. The petitioners 3 and 4 shall file affidavit of undertaking before the Trial court that they will not dispute their identity and that their counsel will cross-examine the prosecution witnesses on the day they are examined-in-chief and that they will not adopt dilatory tactics. On such undertaking, the Trial court shall dispense with the personal appearance of the petitioners. If the petitioners adopt any dilatory tactics, the Trial Court can insist on their presence."

3. Subsequent to the order passed by this Court, the respondent examined PW1 and also marked certain documents, on 14.11.2017. Since the petitioners did not cross-examine PW1 on the very same day, the Court below proceeded to close the evidence of PW.1 and posted the matter on 22.11.2017.

4.Thereafter on 22.11.2017, the petitioners had filed an application under Section 311 of Cr.P.C., seeking to recall PW.1 for cross examination. This petition has been dismissed by the Court below on the ground that the petitioners had failed to strictly comply with the directions given by this Court on the earlier occasion, specifically to the effect that the petitioners shall cross-examine the witnesses on the same day when they are examined in chief. Aggrieved by the same, the present petition has been filed before this Court.

5. It is true that this Court had directed the petitioners to cross-examine the witnesses on the same day when the witness is examined in Chief. However, in the petition filed under Section 311 of Cr.P.C it is stated that the counsel representing the petitioners was not in town and therefore it was beyond the control of the petitioners to cross examine PW.1 on the same day. It is also seen that the petition to recall PW.1 has been filed within eight days from the date on which the PW.1 was examined in Chief. Therefore, this Court does not find any intention on the part of the petitioners to drag on the proceedings or adopting dilatory tactics. If the petitioners had been permitted to cross examine PW.1, the case itself would have been over by now. However, the Court below was inclined to dismiss the application filed by the petitioners.

6. In the facts and circumstances of the case, this Court is of the view that one last opportunity must be given to the petitioners to recall and cross examine PW.1. Since, the burden of proof is upon the petitioners under Section 139 of Negotiable Instruments Act, fair opportunity must be given to the petitioners to rebut the presumption. Therefore, the order of the Court below made in CrI.M.P.No.9667 of 2013 dated 09.01.2018 is hereby set aside. The Court below is directed to fix a date for appearance of PW.1. On the date when PW.1 appears, on the very same day the counsel for the petitioner's shall cross-examine PW.1 and complete the same on the very same day, if for any reason the petitioners failed to cross examine PW.1 on the date when he appears, it is made clear that the petitioners shall forfeit their right to cross examine PW.1 thereafter. The petitioner shall pay a sum of Rs.1,500/- (Rupees Thousand Five Hundred only) to PW.1 on the day when he appears before the Court for giving evidence.

7. The CC is of the year 2016, therefore this Court deems it fit to fix the time limit for the completion of the Court proceedings. The Court below is directed to complete the proceedings in C.C.No.835 of 2016, within a period of two months from the date of receipt of a copy of this order.

8. With the above directions, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

To

The Metropolitan, Magistrate Fast Track Court-IV,
George Town, Chennai-1.

CrI.O.P.No.3616 of 2018

(CS-DR)
EU(19/11/2018)



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