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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2018

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.22276 of 2018
and Crl.M.P.No.12320 of 2018

A.Durairaj ...Petitioner

-Vs-

Pratap ... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to set-aside the dismissal order passed by the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai in Crl.M.P.7031 of 2018 in C.C.No.700 of 2017 dated 29.08.2018.

For Petitioner : Mr.M.Dharani Dharan

ORDER

This Criminal Original Petition has been filed challenging the order of the Court below dismissing the petition filed by the petitioner under Section 311 Cr.P.C. to recall PW1 and for further cross examination.

2. It is seen from the records that P.W.1 was partly cross examined by the petitioner on 05.06.2018 and the case was thereafter posted on 30.07.2018 for further cross examination. The counsel representing the petitioner was not able to appear before the Court and therefore P.W.1 was not further cross examined on 30.07.2018 and the Court below had closed the further cross examination of PW.1.

3. The petitioner therefore filed Crl.M.P.No.7031 of 2018 before the Court below seeking for further cross examination of P.W.1. This petition was opposed by the respondent. The Court below dismissed the petition on the ground that the reason given for not further cross examining of P.W.1 is not acceptable and the petitioner has not made out the case for recalling P.W.1.

4. The learned counsel for the petitioner would submit that the petitioner is facing trial for an offence under Section 138

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of Negotiable Instruments Act and since the burden is upon the petitioner under Section 139 of Negotiable Instruments Act, the petitioner has to necessarily discharge the burden and therefore sufficient opportunity should be given to the petitioner to recall P.W.1 for the purpose of further cross examination.

5. The respondent has been served and there is no representation for the respondent.

6. In the facts and circumstances of the case, this Court deems fit to give one last opportunity to the petitioner to recall and for further cross examination of P.W.1. The order of the Court below made in Crl.M.P.7031 of 2018 is hereby set aside. The Court below shall recall P.W.1 and shall permit the petitioner to further cross examine of P.W.1 on 06.12.2018. The learned counsel for the petitioner shall complete the cross examination on the same day on which, P.W.1 appears before the Court.

7. In the result, this Criminal Original Petition is allowed and the Court below is directed to complete the proceedings in C.C.No.700 of 2017 within a period of two months from the date of receipt of copy of this order.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

vsa/LPP

To

The Metropolitan Magistrate,
Fast Track Court No.IV,
George Town, Chennai

+1cc to Mr.DharaniDharan, Advocate Sr.80554

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srg 28/11/2018

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