

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.08.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.Nos.21105 & 21324 of 2018

and CRL.M.P.No.11453 of 2018

P.Chandra Sakthish ... Petitioner in both Crl.O.Ps./Accused

Vs

A.Sakthivel ... Respondent in both Crl.O.Ps./Complainant

Prayer in both Crl.O.Ps.:— Criminal Original Petitions filed under Section 482 Cr.P.C., to set aside the orders both dated 14.06.2018 in Crl.M.P.No.3959 & 3958 of 2018 in C.C.No.648 of 2014, respectively, on the file of the learned Judicial Magistrate No.I, FTC at Magisterial Level, Coimbatore.

For Petitioner : Mr.V.Sivakumar

C O M M O N O R D E R

The petitioner is an accused in C.C.No.648 of 2014 pending on the file of the learned Judicial Magistrate No.I, Fast Track Court, Coimbatore, for the offence under Section 138 of the Negotiable Instruments Act.

2. It is the case of the complainant that the petitioner had received a loan of Rs.9 lakhs from the complainant on 22.12.2011 and towards the discharge of the said liability, the petitioner had issued impugned cheques, which when presented by the complainant were dishonoured. The complainant issued a demand Notice dated 13.06.2013, which was received by the accused on 24.06.2013. The accused had neither chosen to give reply to the demand notice nor make the payment. Therefore, the complainant filed a compliant in C.C.No.648 of 2014 as stated above. The complainant was examined in chief on 16.02.2015. The accused cross-examined the complainant on 26.04.2016, 07.04.2017, 02.05.2017 and 29.05.2017. Thereafter, P.W.2 was examined on behalf of the prosecution on 07.08.2017 and the matter was adjourned to 08.09.2017 and 27.09.2017. However, the accused did

not cross examine the said witness and the accused filed a petition in C.M.P.No.12074 of 2017 in C.C.No.648 of 2014, calling for some documents from the complainant, which was also submitted to the trial Court. Thereafter, the accused has filed two petitions in C.M.P.No.3958 of 2018 to recall P.W.1 & P.W.2 and C.M.P.No.3959 of 2018 to reopen the case for further cross examination of P.W.1 & P.W.2, which were dismissed by the trial Court by a common order dated 14.06.2018. Challenging the same, the accused is before this Court.

3. The learned counsel appearing for the petitioner/accused submitted that it is just and necessary for the accused to cross-examine P.W.1 and P.W.2, in order to confront them with the documents produced by them under Section 91 of Cr.P.C. He further submitted that it is the defence of the accused that the amount has been paid and the complainant stated in his cross-examination that those amounts were credited into the account of his wife.

4. Heard the rival submission made by the accused.

5. In the case of "State of Orissa vs. Debendra Nath Padhi reported in 2004 AIR SCW 6813", the Supreme Court has stated that no roving or fishing enquiry can be permitted with the aid of Section 91 Cr.P.C. In this case, the accused has examined P.W.1, irregularly for five days, as if it was a murder case. In the case of "Vinoth Kumar Vs. State of Punjab reported in (2015) 3 SCC 220", the Supreme Court states that the chief and cross examination of the witness must be done on the same day. In the case of "State (NCT of Delhi) Vs. Shir Kumar Yadev reported in (2016)2 SCC 402", the Supreme Court has given guidelines for entertaining a petition filed under Section 311 of Cr.P.C.

6. In the present case, the petitions are filed under Section 311 of Cr.P.C. and the petitioner has not given any sound reasons as to why P.W.1 & P.W.2 should be recalled for the purpose of cross-examination. On the mere asking of the petitioner, the witness can not be recalled.

7. Accordingly, the criminal original petitions are dismissed. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

rts

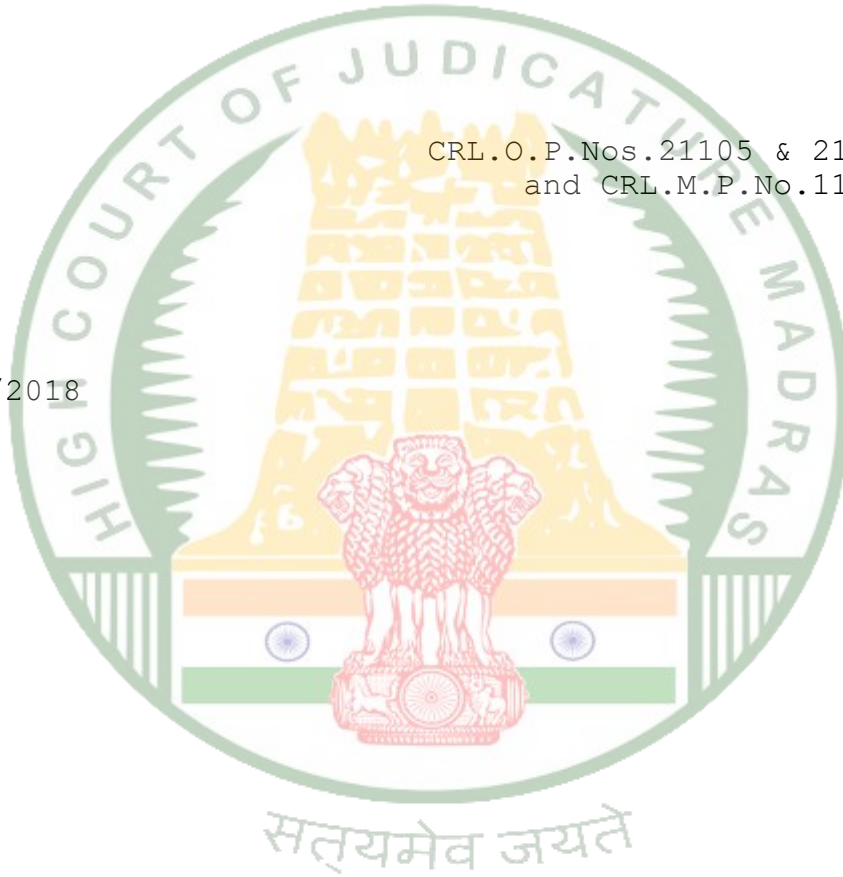
To

The Judicial Magistrate Court No.I,
FTC at Magisterial Level, Coimbatore.

+lcc to Thiru.N.Sivakumar, Advocate Sr.59995

CRL.O.P.Nos.21105 & 21324 of 2018
and CRL.M.P.No.11453 of 2018

mr[col]
srg 26/09/2018



WEB COPY