

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.04.2018

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP No.11189 of 2018

and

Crl.M.P.No.5765 of 2018

1.M/s.Saijayini Housing Promoters (P) Ltd.,
No.25, Govindan Road,
West Mambalam,
Chennai 600 033.

2.L.Senthil Kumaran

3.J.Soughath Rana

4.R.Mahalakshmi

... Petitioners

Vs

Nikita Agency,
Rep. by Barath,
No.356, Mint Street, Sowcarpet,
Chennai-79

... Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the order passed by the learned IV FTC, Metropolitan Magistrate, George Town, Chennai in Crl.MP.No.877 of 2018 in CC.No.5795 of 2008 dated 06.03.2018 and directing the learned Judicial Magistrate to re-open the case and to re-call the P.W.1 for cross examination.

ORDER

This Criminal Original Petition has been filed seeking to set aside the order dated 06.03.2018 passed in Crl.M.P.No.877 of 2018 in C.C.No.5795 of 2008 on the file of the Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai and re-open the case and re-call P.W.1 for cross examination.

2. For the sake of convenience, the petitioners and the respondent are referred to as the accused and the complainant respectively.

3. The complainant initiated a prosecution in C.C.No.5795 of 2008 under Section 138 of the Negotiable Instruments Act, 1881 and the same is now pending before the Fast Track Court, George Town, Chennai. The complainant was examined on 29.06.2009 and thereafter, sufficient opportunity was given to the accused to cross examine the complainant. The accused filed C.M.P.No.3917 of 2014 under Section 311 Cr.P.C. which was allowed by the trial court. Even after the petition was allowed, the complainant was present on several dates before the trial Court and the accused has been taking adjournments without cross examining the complainant as follows:

"24.10.2017, 02.11.2017, 11.12.2017,
26.12.2017 and 09.01.2018."

4. Taking all these factors into consideration, the trial Court closed the evidence of P.W.1. Hence, the accused filed Crl.M.P.No.877 of 2018 in C.C.No.5795 of 2008 under Section 311 Cr.P.C., which has been dismissed by the trial court on 06.03.2018 by a well considered order.

5. The learned counsel for the accused submitted that the entire case filed by the complainant is a false case and that, Civil Suit is pending between them, in which, the accused have deposited a sum of Rs.30,00,000/-.

6. Be that as it may, the fact remains that the proof affidavit in the case was filed in the year 2009. From 2009 to 2018, the accused have adopted dilatory tactics. In fact, the trial Court has allowed the Section 311 application in Crl.M.P.No.3917 of 2014, despite which, the accused have not chosen to cross examine the complainant. Trial under Section 138 of the Negotiable Instruments Act, should be completed within a period of six months, whereas, this case has been pending for more than six years.

7. In the light of the law laid down by the Apex Court in the decision in **State of Delhi Vs. Shiv Kumar Yadav and another, [2016 (2) SCC 402]**, this Court is of the view that the order dated 06.03.2018 passed by the trial Court impugned herein does not warrant interference.

8. However, the accused have the option to give their explanation under Section 313 Cr.P.C.

This petition is disposed of with the above direction. Consequently, connected Crl. miscellaneous petition is closed.

11.04.2018

Index :Yes/No
Speaking/Non-speaking
lok/cia

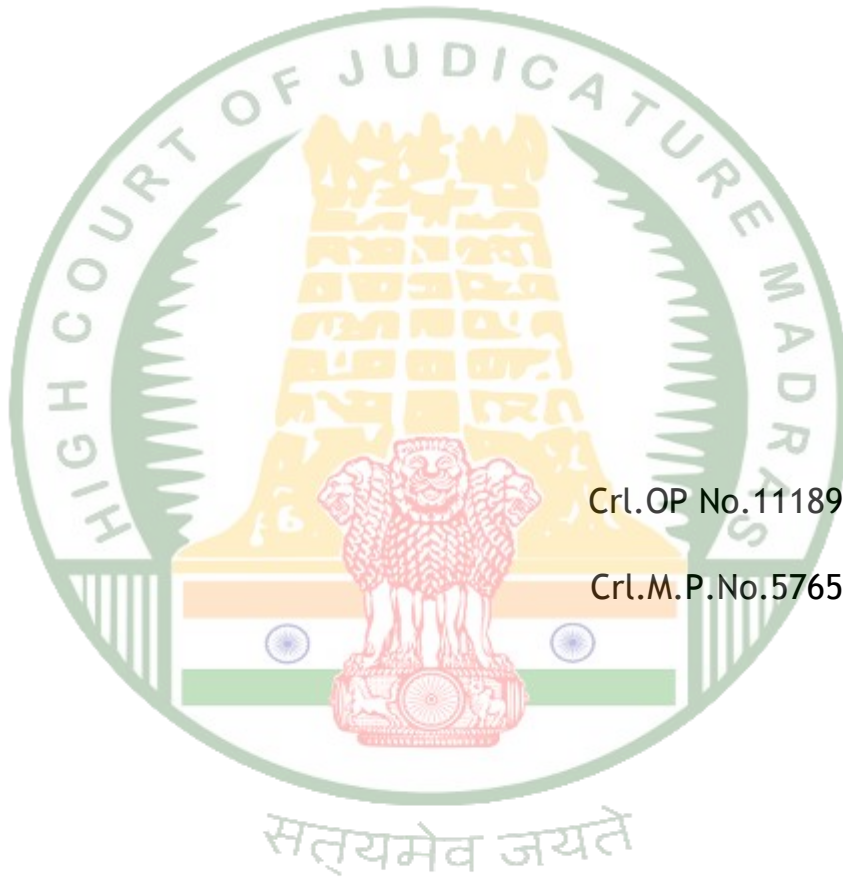
To

1. The Metropolitan Magistrate,
IV FTC,
George Town, Chennai.
2. The Public Prosecutor,
High Court, Madras.

WEB COPY

P.N.PRAKASH,J

cla



Crl.OP No.11189 of 2018
and
Crl.M.P.No.5765 of 2018

WEB COPY

11.04.2018