

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2018

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.No.25867 of 2018

and

CrI.M.P.No.14835 of 2018

1. M/s.Sira Marketing Service,
No.60/30 28th cross street,
Indhira Nagar,
Chennai 600 020.
2. Dr.Mrs.Snehalatha Elangovan,
Partner, M/s.Sira Marketing Service.
3. Mr.K.Rajesh,
Partner, M/s.Sira Marketing Service. Petitioners

Vs.

M/s.Pacemen Finance India Pvt., Ltd.,
Rep. by its authorized person Mr.Elumalai,
No.963, Poonamallee High Road,
Crescent Court, Suit No.21,
Purasawakkam, Chennai- 600 020. Respondent

PRAYER:

Criminal Original Petition filed under Section 482 Cr.P.C,
to Set-aside the order passed by the learned Metropolitan
Magistrate, Fast Track Court-IV, George Town, Chennai in
CrI.M.P.No.7208 of 2018 in C.C.No.2222 of 2017 dated 11.10.2018
and recall PW-1 on the same day for the purpose of cross
examination.

For Petitioners : M/s.K.Kannan

For Respondent : Mr.V.Bhiman

O R D E R

This Criminal Original Petition has been filed challenging the order passed by the Court below, dismissing the application filed by the petitioners under Section 311 of Cr.P.C to recall P.W.1 and to cross examine him.

2.The petitioners are accused persons in a complaint filed under Section 138 of N.I. Act by the respondent. P.W.1 was examined in Chief on 30.07.2018. The petitioners cross examined the respondent on 05.04.2018 and on 24.05.2018 and the case was also adjourned for further cross. However, the evidence of P.W.1 was closed on 30.07.2018. Therefore, the petitioners filed a petition to recall P.W.1 for further cross examination and this petition has been dismissed by the Court below by an order dated 11.10.2018, on the ground that P.W.1 has already been cross examined on two occasions.

3.The learned counsel for the Petitioners would submit that one more opportunity can be given to the petitioners to cross examine P.W.1 and the petitioners must be given sufficient opportunity since, there is a presumption under Section 139 of the N.I.Act.

4.The learned counsel for the respondent would submit that the petitioners have already cross examined P.W.1 on two occasions and in spite of giving several opportunities, the petitioners did not cross examine P.W.1 and therefore the Court below has rightly closed the evidence of P.W.1 on 30.07.2018. Therefore, there is no ground to interfere with the order passed by the Court below.

5.This Court has considered the submissions made on either side. This Court is of the considered view that one last opportunity can be given to the petitioners to cross examine P.W.1. Therefore, the order passed by the Court below in Crl.M.P.No.7208 of 2018 dated 11.10.2018, is hereby set aside.

6. P.W.1 shall be present before the Court below on 06.12.2018 and on the same day, the counsel for the petitioners shall further cross examine P.W.1 and complete the same on the same day. If, for any reason the petitioners fail to cross examine P.W.1 on 06.12.2018, the petitioners shall forfeit their right to recall P.W.1 in future. It is also made clear that all the other witnesses in this case shall be cross examined on the same day, they are examined in Chief.

7.This Criminal Original Petition is disposed of with a

direction to the Court below to dispose of C.C.No.2222 of 2017, within three months from the date of receipt of the copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

rri/rm

To

+1cc to M/s.K.Kannan, Advocate, S.R.No.80345

CRL.O.P.No.25867 of 2018
and
Crl.M.P.No.14835 of 2018

CS/28/11/2018



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