

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.No.29158 of 2018

and

Crl.M.P.No.17063 of 2018

D.Balakrishnan
Prop: Priya Tex

...Petitioner/Accused

Vs.

S.Sathishkumar
Prop: Shakthivinayaka Textiles

...RespondentComplainant

PRAYER: Criminal Original Petition filed under Section 482 of the Cr.P.C., to set aside the order dated 10.10.2018 made in C.M.P.No.5001 of 2018 in S.T.C.No. 1424 of 2011 on the file of the learned Judicial Magistrate No.II, Erode.

For Petitioner : Mr.M.Guruprasad

O R D E R

This petition has been filed by the petitioner challenging the order passed by the Court below in allowing the petition filed by the respondent under Section 311 of Cr.P.C to recall PW1 and to mark some important documents.

2. The petitioner is facing a Criminal Complaint before the Court below filed by the respondent under Section 138 of Negotiable Instruments Act 1881. PW1 was examined on 19.1.2018 and thereafter, he was cross examined on 17.07.2018 by the learned counsel for the petitioner and his evidence was closed. Subsequently, the respondent has filed a petition under Section 311 of Cr.P.C., seeking to recall PW1 for the purpose of marking some important documents.

3. The Court below on considering the facts and circumstances of the case, thought it fit to allow the petition filed by the respondent on the ground that the respondent only wanted to produce certain documents and accounts statement and therefore, a fair opportunity must be given to him.

4. The learned counsel for the petitioner would submit that the petitioner had elucidated certain important answers from PW1 in the course of cross examination and by virtue of filing this petition under Section 311 of Cr.P.C, the respondent wants to fill up the lacuna. Therefore, the learned counsel would submit that a petition under Section 311 of Cr.P.C should never be entertained where it is found that the same has been filed only to fill up lacuna. In order to substantiate the submission, the learned counsel would rely upon the judgment of the Hon'ble Supreme Court in Mohanlal Shamji Soni Vs. Union of India and another reported in 1991 SCC(Cri) 595.

5. This Court has carefully considered the submission made by the learned counsel for the petitioner.

6. There is no dispute with regard to law that has been enunciated by the Honourable Supreme Court in the judgment cited supra. The purpose for which the respondent has filed the petition under Section 311 is only to file certain accounts statement before the Court below by recalling PW1. The petitioner will always have the opportunity to cross examine PW1 and also put question to PW1 on the accounts statement produced by him.

7. That apart the petitioner can also question PW1 if there is any contradiction with the earlier version given by him. Therefore, the petitioner will not be put any prejudice if PW1 is recalled for the purpose of marking certain documents.

8. After all, the discretion vested to the Trial Court under Section 311 of Cr.P.C is very wide and the order passed by the trial Court cannot be interfered with unless this Court is able to see any apparent infirmity or perversity in the order passed by the Court below. This Court is not able to see any illegality in the order passed by the Court below.

9. In the result this Criminal Original Petition is dismissed and the Court below is directed to complete the proceedings in S.T.C. 1424 of 2011 within a period of three months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is also closed.

mpa/rpl

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

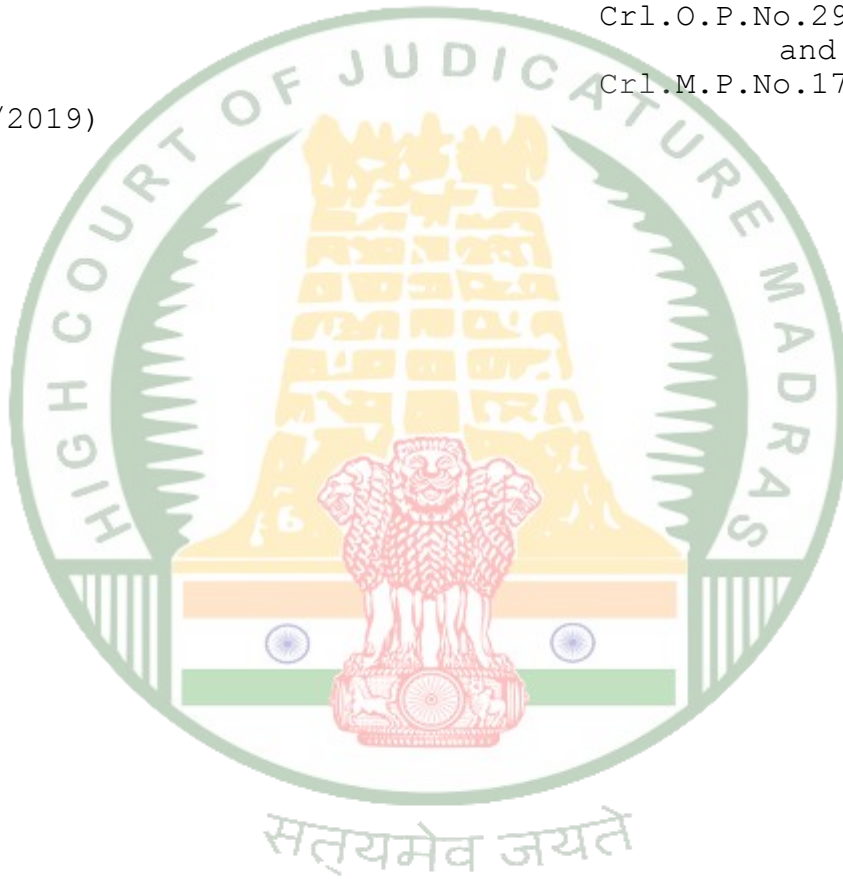
1.The Judicial Magistrate II,
Erode.

2. - Do- Thro: The Chief Judicial Magistrate,
Erode.

+lcc to Mr.M.Guruprasad, Advocate, S.R.No.86413

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