

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 21.01.2019

CORAM
THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.133 of 2019 and Crl.MP No.85 of 2019

Mr.John Sebastian ... Petitioner/ Accused
Vs.

Mrs.Jeanette DoyleRespondent/ Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 26.12.2018 passed in MP No.10566 of 2018 in CC No.3814 of 2016 by the FTC-II, Metropolitan Magistrate Court, Egmore, Alikulam.

For Petitioner : Mr.P.Rathanavel

For Respondents: Mr.R.Manickavel

ORDER

This Criminal Original Petition has been filed challenging the order passed by the Court below dismissing the petition filed by the petitioner to recall PW1 for further cross examination.

2. It is seen from records that the petitioner is facing trial before the Court below for an offence under Section 138 of Negotiable Instrument Act. The respondent examined himself as PW1 and he was also cross-examined by the petitioner. Subsequently, the petitioner filed a petition before the Court below to send the cheque to an expert in order to determine the age of the ink. This petition was dismissed by the Court below. Aggrieved by the same, the petitioner filed Crl.OP No.9359 of 2017 before this Court and this Court by an order dated 19.12.2018 dismissed the said petition on the ground that there is no expert available to determine the age of the ink.

3. The petitioner thereafter filed a petition to recall PW1 on 26.12.2018 in order to put further questions by way of cross-examination. This petition was dismissed by the Court below on the ground that the petitioner did not state, on what grounds, the further cross-examination is necessary.

4. The petitioner as a accused person has to be afforded with sufficient opportunity to rebut the presumption under Section 139 of the Negotiable Instrument Act. The petitioner already made an attempt to send the cheque to an expert to determine the age of the ink. However, this petition came to be dismissed. Therefore, the petitioner has to be necessarily given an opportunity in order to put forth all the questions to PW1. Therefore, this Court is of the considered view that one last opportunity can be given to the petitioner to recall and further cross-examine PW1.

5. The order passed by the Court below in MP No.10566 of 2018 dated 26.12.2018 is hereby set-aside. The Trial Court is directed to fix a date for the appearance of PW1. On the same day, when PW1 appears before the Court, the petitioner should complete the cross examination. If for any reason, the petitioner fails to cross-examine PW1 on the day when he appears, the petitioner shall forfeit his right to recall PW1 in future.

6. In the result, this Criminal Original Petition is allowed and the Court below is directed to complete the proceedings in CC No.3814 of 2016 by the FTC II, Metropolitan Magistrate Court, Egmore at Allikulam, Chennai - 3, within a period of two months from the date of receipt of copy of this order. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Presiding Officer,
Fast Track Court -II,
(Metropolitan Magistrate Court),
Egmore at Allikulam,
Chennai - 600 003.

+1cc to Mr.P.Rathanavel, Advocate, S.R.No.4127

Cr1.O.P.No.133 of 2019

rrs 13/02/2019