

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2019

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.No.351 of 2019
and CrI.O.P.No.221 of 2019

Lilly Pushpam

...Petitioner

Versus

G.Ramesh

...Respondent

PRAYER:

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the Order dated 17.12.2018 passed in C.M.PNo.6931 of 2018 in S.T.C.No.788 of 2017, on the file of the Judicial Magistrate Court No.III, Salem.

For Petitioner : Mr.C.Prabakaran

For Respondent : Mr.R.Muruga Bharathi

O R D E R

This Criminal Original Petition has been filed challenging the order passed by the Court below dismissing the petition filed under Section 311 of Cr.P.C to recall PW1 for cross-examination.

2.The petitioner is facing trial before the Court below for an offence under Section 138 of the Negotiable Instruments Act. The petitioner was given sufficient opportunity to cross-examine PW1 and ultimately a lost chance was given to the petitioner on 25.10.2018 by imposing a cost of Rs.1,000/-. Thereafter, the case was adjourned to 16.11.2018, on that day, since the cost was not paid and PW1 was not cross-examined, the evidence was closed. Thereafter, the petitioner filed a petition under Section 311 of Cr.P.C for recalling of cross examination of PW1.

3.The learned counsel for the petitioner submitted that the complaint is of the year 2017 and one last opportunity can be given to the petitioner to recall and cross-examine the PW1.

The learned counsel would further submit that even a time limit can be fixed for the disposal of the complaint.

4.The learned counsel appearing for the respondent would submit that the petitioner has been dragging on the proceedings and in spite of sufficient opportunity, the petitioner did not cross-examine the PW1 and therefore, the Court below was right in dismissing the petition filed by the petitioner.

5.This Court has carefully considered the submission made on either side. Admittedly, the complaint is of the year 2017 and the examination of PW1 started only during June 2018. It is true that the Court below gave sufficient opportunities to the petitioner and ultimately even fixed a cost of Rs.1,000/- to be paid by the respondent and this has also not been complied with by the petitioner.

6.In the facts and circumstances of the case, this Court is inclined to give one last opportunity to the petitioner. The order passed by the Court below in C.M.P.No.6931 of 2018, dated 17.12.2018 is hereby set aside. The Court below is directed to fix a date for cross-examination of PW1. On the very same day, the petitioner shall cross-examine PW1. If for any reason, the petitioner does not cross-examine PW1 on the date when he appears, the petitioner shall forfeit her right to recall PW1 in future. The petitioner shall pay a sum of Rs.2,000/- to PW1 on the date when he appears.

7.This Criminal Original petition is accordingly allowed and the Court below is directed to complete the proceedings within a period of three months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

vv2/rpl

To

1. The Judicial Magistrate Court No.III,
Salem.

2. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.C.Prabakaran, Advocate, S.R.No.4234

+lcc to Mr.R.Muruga Bharathi, Advocate, S.R.No.4522

CRL.O.P.No.351 of 2019

CS/04/02/2019



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