

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2019

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.Nos.401 & 403 of 2019

G.Selvamathi ... Petitioner in both Crl.OP's.

Versus

M/s.Sree Gokulam Chits & Finance Com (P) Ltd.,
Having registered office at Chennai,
Regional Office at,
59/1-A 1st Floor, Mayanoor Main Road,
Near ARRS Multiplex Salem-636 004,
Rep by its Authorized Person,
P.Kaliyappan, Aged about 35 years,
S/o.Ponnuvel. ... Respondent in both Crl.OP's.

COMMON PRAYER: Criminal Original Petitions are filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed in Crl.M.P.Nos.781 & 1449 of 2018 respectively in S.T.C.No.138 of 2018 dated 27.11.2018 on the file of the Special Judicial Magistrate for Land Grabbing Cases, Salem.

For Petitioner in both Crl.OP's. : Mr.E.C.Ramesh
For respondent in both Crl.OP's. : Mr.L.Rajasekar

O R D E R

These petitions have been filed challenging the order passed by the Court below in C.M.P.Nos.781 & 1449 of 2018 in S.T.C.No.138 of 2018, dated 27.11.2018, dismissing the petition filed by the petitioner under Section 311 of Cr.P.C.

2.The petitioner is facing trial before the Court below for an offence under Section 138 of Negotiable Instruments Act. PW.1 was examined on the side of the complainant on 22.03.2018. However, the petitioner did not examine the PW.1. Therefore the petition came to be filed before the Court below under Section 311 of Cr.P.C to recall PW.1 for cross-examination. These petitions have been dismissed by the Court below on the ground that in spite of sufficient opportunity given to the petitioner, the petitioner failed to cross-examine the PW.1.

3.It is seen from the records that the complaint is of the year 2018 and therefore, one last opportunity can be given to the petitioner to recall and cross-examine PW.1. The petitioner being an accused, has to be necessarily given sufficient opportunity to rebut the presumption under Section 139 of the Negotiable Instruments Act.

4.The order passed by the Court below in C.M.P.Nos.781 & 1449 of 2018 dated 27.11.2018 is hereby set aside. The Court below is directed to fix a date for appearance of PW.1 and on the very same day, the petitioner is directed to cross-examine PW.1. If for any reason, the petitioner does not cross-examine PW.1 on the date of appearance, the petitioner shall forfeit her right to recall PW.1.

5.These Criminal Original Petitions are 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.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vv2/rpl

To

1.The Special Judicial Magistrate for Land Grabbing Cases,
Salem.

+1cc to Mr.E.C.Ramesh, Advocate, S.R.No.4420

+2cc to Mr.L.Rajasekar, Advocate, S.R.No.4331 &4332

Cr1.O.P.No.401 & 403 of 2019

GSP(06/02/2019)