

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2019

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.2138 of 2019
and CRL.MP.No.1346 of 2019

K.Yogeshwari

... Petitioner/Accused

Vs.

B.Backkialakshmi

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records pertaining to Crl.MP.No.71316 of 2018 in CC.No.3032 of 2016 on the file of the Metropolitan Magistrate, Fast Track Court IV George Town, Chennai and set aside the same.

For Petitioner : Mr.T.Sundaravadanam

For Respondent : Mr.R.Bhagawat Krishna

O R D E R

The Criminal Original Petition has been filed to set aside the order passed in Crl.MP.No.71316 of 2018 in C.C.No.3032 of 2016 dated 27.12.2018, on the file of the Metropolitan Magistrate, Fast Track Court IV George Town, Chennai, thereby dismissing the application filed by the petitioner under Section 311 of Cr.P.C. to recall PW1 for further cross examination.

2. The learned counsel for the petitioner submitted that though PW1 already cross examined, some vital points have not been cross examined with PW1. He further, submitted that important suggestions were left out to the questions with PW1. Therefore, he prayed for dismissing the order of the trial Court.

3.The learned counsel for the respondent would submit that 313 proceedings has already been over and the case posted for defence side evidence on 03.02.2018, 19.02.2018, 03.03.2018, 06.03.2018 and 26.03.2018. Therefore, he filed an application under Section 91 Cr.P.C and the same was also dismissed by an order dated 13.08.2018. Thereafter, the case posted for arguments. Therefore, he vehemently opposed.

4.Heard, the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the documents available on record.

5.It is seen from the records that the petitioner facing proceedings under Section 138 of Negotiable Instruments Act by the respondent herein. The defacto complainant was examined as PW1 and also cross examined by the petitioner. Therefore, the questioning has also over under Section 313 Cr.P.C. At this juncture, the petitioner has come forward with this petition to recall PW1 for further cross examination.

6.It is also seen that some of the suggestions were left out from the cross examination of PW1 and the case is posted on 11.03.2019.

7.Considering the above facts and circumstances, the petitioner may be given one more opportunity to recall and cross examine PW1.

8.Accordingly, the learned Magistrate is directed to permit the petitioner to recall and cross examine PW1 on next hearing itself, on payment of necessary charges by the petitioner, failing which, the trial Court is directed to proceed with the trial in accordance with law. It is made clear that the petitioner shall complete the cross examination on the same day.

9.With the above directions, the order passed Metropolitan Magistrate, Fast Track Court IV George Town, Chennai in Crl.MP.No.71316 of 2018 in CC.No.3032 of 2016 dated 27.12.2018, is set aside and the Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

pam

To

The Metropolitan Magistrate,
Fast Track Court IV
George Town, Chennai

+lcc to Mr.K.Manikandan, Advocate, S.R.No. 22850

CRL.O.P.No.2138 of 2019
and CRL.MP.No.1346 of 2019

SSI (CO)
GN(29/03/2019)