

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2019

CORAM

THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.5106 of 2019

Shri Kamaravadi Shivappa Mahindra
Proprietor Quikon Point Distributors
4/5/6/, above quikon Electronic Show Room
Next to BPS Exhibition Ground
Near Ana-Fonte Garden, Margoa,
Goa - 403 601. Also having office at
Office No.26-27, Ground Floor,
Near Loyola High School, Behind
Papallion Loungevirgincar Bhawan,
Margoa, Goa-403 601.

.... Petitioner

Vs

Panasonic India Private Limited,
Having its Office at Godown No.3, Opposite Yadu Gardens
GT Karnal Road, Alipur, New Delhi,
represented by its Authorised Signatory,
Mr.Mahendra Singh Baura, Through his Power Agent
Mr.K.M.Sujeed Kumar,
Represented by V.Swaminathan

.. Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code to call for the records in Crl.M.P.No.7082 of 2018 in C.C.No.1007 of 2017, order dated 14.02.2019, on the file of the learned Fast Track IV Metropolitan Magistrate, George Town, Chennai and set aside the same.

For Petitioner : M/s.R.Priyakumar

For Respondent : Mr.E.G.Hem Naag Indiran
for M/s Kochhar and Company

O R D E R

This Criminal Original Petition has been filed by the petitioner seeking to set aside the order in Crl.M.P.No.7082 of 2018, dated 14.02.2019 passed by the learned Fast Track IV Metropolitan Magistrate, George Town, Chennai.

2. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent.

3. The case of the petitioner/accused is that he is the Proprietor of M/s.Quikon Point Distributor and engaged in the business of sale and service of electronic and house hold goods. His company was appointed by the respondent/complainant as its one of the dealers in Goa. The respondent filed a complaint under section 138 of the Negotiable Instruments Act against the petitioner/accused alleging that the accused issued a cheque for a sum of Rs.10,00,000/- and the same returned unpaid for the reasons stated in the return Memo. The above said case was posted for PW1's cross examination as a last chance on 23.04.2018. On that day, neither the complainant nor its counsel appeared before the Court below, and hence, the case was adjourned to 17.05.2018 for PW1's cross examination. Again on 17.05.2018 also, neither the complainant nor its counsel represented the above case and the same was adjourned to 07.06.2018 for cross examination of PW1. Further, when the above case was listed for hearing on 07.06.2018, the complainant was present and the same was adjourned to 27.06.2018 for PW1's cross examination. Further, the counsel on record returned to his house after lunch on the day due to his severe stomach problem, and hence he could not appear before the Court. The said reason is attributed for the inability to cross examine PW1 on 27.06.2018. Therefore, the cross examination of the respondent is very essential to prove the case of the accused that the alleged cheque in question was taken by the complainant in the month of September, 2013 and there is no legally enforceable liability between the accused and the complainant. All the transactions were done between the accused and the complainant only in NEFT and RTGS and hence the petition was filed to reopen the case and recall the PW1 for cross examination of the petition to recall PW1 is not allowed, the petitioner will be put to irreparable loss. No prejudice would be caused to the respondent if this petition is allowed.

4. The respondent/complainant had filed a counter affidavit by contending that the petition is nothing but an attempt to drag on the proceedings. The proof affidavit of PW1 was filed on 29.11.2017 and the Court below had granted several opportunities for the petitioner to cross examine PW1 on 22.01.2018, 20.02.2018, 22.03.2018, 23.04.2018 and 27.06.2018. On those dates, the petitioner failed to cross examine PW1. Hence, the cross examination was closed. The petitioner was questioned under Section 311 of CrPC on 11.07.2018. On that date, the present petition was filed. Even the petitioner/accused had led the case in NBW stage which was

recalled in between. Hence, it is stated that the reasons are not valid for reopening the evidence of PW1 and prayed to dismiss the above petition.

5. The Court below dismissed the recall petition, against which the petitioner has filed the above criminal original petition.

6. Considering the above facts and circumstances of the case, the petitioner may be given one more opportunity to cross examine PW1. Even though the petitioner had already cross examined PW1, on the petition under section 311 of CrPC, after cross examination of PW1, he wants to cross examine PW1 on the score of examination of PW1.

7. In view of the above, the order in CrI.M.P.No.7082 of 2018, dated 14.02.2019 passed by the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai-1, is set aside. The Criminal Original Petition is allowed on payment of costs of Rs.2,500/- (Rupees Two Thousand Five Hundred Only) before the Trial Court to the credit of C.C.No.1007 of 2017 on the file of the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai-1. Further, the Trial Court is directed to permit the petitioner to cross examination of PW1 on 22.04.2019 and if the petitioner fails to cross examination of PW1 on that day, the Trial Court is directed to proceed with the trial in accordance with law and dispose of the case within a period of four months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (AD-IV)

//True Copy//

msm
To

Sub Assistant Registrar

1. The Metropolitan Magistrate, Fast Track Court No.IV,
George Town, Chennai-1.

2. The Public Prosecutor, High Court, Madras.

copy to: The Section Officer, Criminal Section, High Court, Madras

+1 cc to M/s.R.Priyakumar, Advocate, S.R.No.35108

CrI.O.P.No.5106 of 2019

SSV(CO)
SSM(24/05/2019)