

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2019

CORAM

THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.6840 of 2019

Rosali @ Rose

... Petitioner

Vs

J. Kasper

.. Respondent

Prayer:

Criminal Original Petition is filed under Section 482 of Criminal Procedure Code to call for the records in C.M.P.No.2275 of 2018 in C.C.No.119 of 2017 on the file of the Judicial Magistrate (Fast Track), Magisterial Level, Alandur and set aside the order passed by the Magistrate dated 27.12.2018 in C.M.P.No.2275 of 2018.

For Petitioner : Mr.P.Suresh

For Respondent : Mr.S.Sathyaraj

O R D E R

This Criminal Original Petition has been filed by the petitioner seeking to set aside the order in C.M.P.No.2275 of 2018, dated 27.12.2018 passed by the learned Judicial Magistrate (Fast Track), (Magisterial Level), Alandur.

2. The complainant filed a private complaint under section 200 of CrPC., as against the petitioner for the alleged offence under section 138 read with section 357 of the Negotiable Instruments Act (hereinafter referred to as the "NI Act").

3. The case of the complainant is that the accused borrowed money from the complainant to the tune of Rs.7,55,000/-, to discharge the loan on 12.02.2017 and the accused has issued a post-dated cheque bearing No.569245, dated 19.02.2017 for a sum of Rs.7,55,000/- to the complainant. As per the request of the accused, on the bona-fide impression, the complainant has presented the cheque on 20.02.2017 with his banker viz., Indian Overseas Bank, Madippakkam Branch, Chennai - 600 091 and the said cheque got returned by the accused bank State Bank of India, Mint Terminus (Chennai) Branch, for the

reason "Funds Insufficient" and the same was intimated to the complainant by his banker Indian Overseas Bank, Madippakkam Branch, by a return memo dated 21.02.2017. The cheque was issued by the accused to discharge the legally enforceable debt owned by her knowingly there was no sufficient funds in her account. Finally, the complainant had issued a legal notice dated 28.02.2017 by demanding the cheque amount and the accused acknowledged the receipt of the same on 02.03.2017 and she has failed to repay the cheque amount after a lapse of 15 days.

4. Further, the same is posted for defence side arguments in C.C.No.119 of 2017 before the Court below. Thereafter, the petitioner has filed a petition under section 311 of CrPC., to recall and for further cross examination of PW1. The reasons stated in the petition, the petitioner wants to cross examine about some sale of property. Already, PW1 was recalled and cross-examined fully and the petitioner was granted sufficient time to cross examine PW1, and PW1's cross-examination was completed by the petitioner and the said petition was dismissed by the Court below.

5. The petitioner is a sole accused in this case. P.W.1 is the victim girl and there are totally three witnesses in this case. The petitioner cross examined P.W.1 and D.W.2 and the case is posted for arguments. The petitioner is being a sole accused, the victim girl has to be necessarily cross examined by the petitioner.

6. Considering the facts and circumstances of the case, this Court feels that the petitioner may be given one more opportunity to put fourth his defence. Accordingly, the order dated 27.12.2018, passed by the learned Judicial Magistrate (Fast Track) Magisterial Level, Alandur, in Crl.M.P.No.2275 of 2018 in C.C.No.119 of 2017, is hereby set aside and the petitioner is permitted to cross examine P.W.1 on the next hearing date by payment of necessary charges. If the petitioner failed to cross-examine P.W.1, as the date fixed by the trial court, the trial Court is directed to proceed with trial in accordance with law.

7. With the above directions, this Criminal Original Petition is allowed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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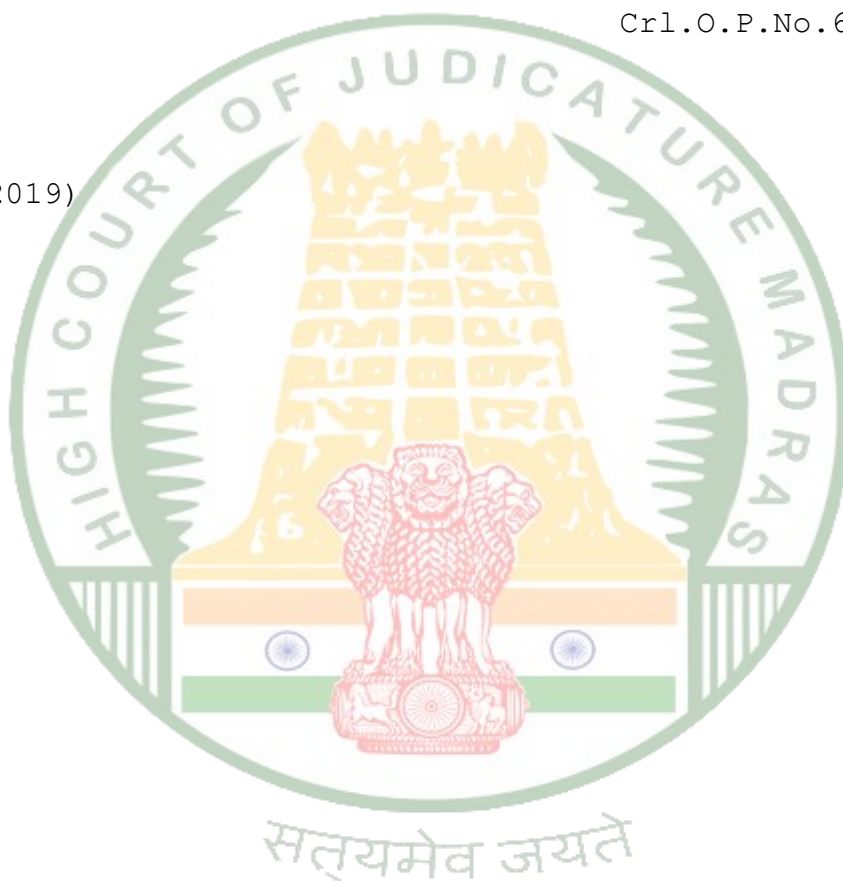
1. The Judicial Magistrate (Fast Track),
(Magisterial Level), Alandur.

+1 CC to Mr.P.Suresh, Advocate sr 33970.

+1 CC to Mr.S.Sathyaraj, Advocate sr 33987.

CrI.O.P.No.6840 of 2019

SKV(CO)
SP(28/05/2019)



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