

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.12.2019

PRONOUNCED ON : 18.12.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

CRLOP.No.25384 of 2019

and

CRL.MP.No.13560 of 2019

Panasonic India Pvt Ltd.,
Rep.by its authorized Signatory
Mr.Swaminathan Petitioner

Vs.

Shri Kamaravadi Shivappa Mahindra
Prop.M/s.Quikon Distributors,
Goa-403 601. Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C, to set aside the order dated 29.08.2019 passed by the IV Fast Track Metropolitan Magistrate, George Town, Chennai in CRL.MP.No.5652 of 2019 in C.C.No.1007 of 2017 and reopen the complainant's side evidence and recall PW1 for further examination.

For Petitioner : Mr.R.Ravichandran
For Respondent : Mr.R.Priya Kumar

ORDER

This petition has been filed by the complainant under Section 482 of Cr.P.C to set aside the order passed in Crl.MP.No.5652 of 2019 in C.C.No.1007 of 2017 dated 29.08.2019 on the file of the IV Fast Track Metropolitan Magistrate, George Town, Chennai.

2. The petitioner herein has filed a complaint under Section 138 read with 142 of the Negotiable Instruments Act, 1881 against the respondent herein and based on the same, the learned IV Fast Track Metropolitan Magistrate, George Town, Chennai has taken the case on file in C.C.No.1007 of 2017 and on appearance of the respondent/accused, he conducted trial. During trial, on the side of the complainant, one witness was examined as P.W.1 and Exs.P.1 to P.16 were marked. After closing the evidence on the side of the complainant with P.W.1, the accused was questioned under Section 313 of Cr.P.C and thereafter, the matter was posted for evidence on the side of the accused. On the side of the accused, one witness was examined as D.W.1 and thereafter, the matter was posted for further evidence on the side of the accused. At that stage

i.e., on 07.08.2019, the petitioner/complainant has filed a petition under Section 311 of Cr.P.C in CrI.MP.No.5652 of 2019 to re-open the evidence on the side of the complainant and also re-call P.W.1 for further examination. The learned trial court has dismissed the said petition by the order dated 29.08.2019. Aggrieved by the same, the petitioner/complainant has filed the present petition.

3. The learned counsel for the petitioner/complainant has submitted that the accused in his proof affidavit has alleged that the complainant is liable to credit a sum of Rs.6,62,000/- towards 2% scheme for the billing for the month of September 2014, free of Cost Machine amounting to Rs.38,490/- and service claims of Rs.4,25,600/- and free installation of Rs.1,60,000/-. He further submitted that the accused on 02.08.2019 in his cross examination has stated that the said service claims of Rs.4,25,600/- pertains to the serial numbers 2, 3, 4 and 6 of the Confirmation of Balance (Ex.B.10). He further submitted that the said service claims were already dealt with by the complainant company vide email dated 20.01.2015. The petitioner company had sent the said email addressing all the issues attaching the accounts receivables and accounts payable. The petitioner Company had paid all the claims payable to the accused and that the petitioner company is no way liable to credit the alleged sum as stated by the accused in his proof affidavit dated 18.06.2019. He further submitted that during cross-examination of D.W.1 a copy of email dated 20.01.2015 along with the attachments was shown to him and the D.W.1 also admitted that the said email is addressed to him. However, he has stated that he will have to verify his records to state whether the said email was actually perused by him or not and hence, the said documents could not be marked through him. He further submitted that in order to prove that the claim of the accused is false, the said e-mail has to be marked and for that purpose the petitioner has filed the petition under Section 311 of Cr.P.C in CrI.MP.No.5652 of 2019 to re-open the complainant's side evidence and to re-call P.W.1 for further examination, but the trial court without considering the aforesaid facts has erroneously dismissed the said petition and therefore he prayed to allow the said petition and set aside the order passed by the trial court and permit the petitioner to re-call P.W.1 for further examination.

4. Per contra, the learned counsel for the respondent has submitted that P.W.1's evidence was over on 06.06.2019 and that after closing the evidence on the side of the complainant, the accused was questioned under Section 313 Cr.P.C., and thereafter the accused examined himself as D.W.1 and closed his evidence on 07.08.2019 and thereafter, the matter was posted for arguments and at that stage the complainant has filed a petition to recall P.W.1 for marking of certain documents. He further submitted that during cross examination of P.W.1, a question was asked as to that in the

email dated 23.12.2014, the accused has stated that complainant has to pay a sum of Rs.6,62,000/- and for that P.W.1 has given an evasive answer as that he can say about the payment of the aforesaid amount only by verifying the records. He further submitted that it is not the case of the petitioner that the documents now sought to be filed were not available with him or could not be produced when the P.W.1 was in witness box. He further submitted that after closing both sides evidence only with a view to fill up the lacuna, the petitioner/complainant has filed the petition to re-call P.W.1 and taking into consideration of the aforesaid facts, the trial court has rightly dismissed the said petition and therefore, he prayed to dismiss this criminal original petition.

5. A perusal of the deposition of DW1 shows that he has admitted in his cross-examination that he did not mention about the claim of Rs.38,490/- towards FOC Machine and service claim of Rs.4,25,000/- in the confirmation of balance (Ex.P10). Further his evidence shows that during his cross-examination, a copy of the e-mail dated 20.01.2015 was shown to him and he also admitted that the address mentioned therein is his e-mail address but with regard to the contents stated therein, he has stated that he can say only on verification and hence it appears that the said document was not marked through him as exhibit. Under the said circumstances, if the petitioner/complainant is permitted to mark a copy of the said e-mail along with the attachments that would not cause any prejudice to the accused. The accused can very well cross examine the P.W.1 with regard to the aforesaid documents and if necessary, he can adduce rebuttal evidence also. Hence, in the interest of justice, this court is inclined to allow this petition.

6. In the result, this criminal original petition is allowed. The order passed by the trial court in Crl.MP.No.5652 of 2019 dated 29.08.2019 is set aside and Crl.MP.No.5652 of 2019 in C.C.No.1007 of 2017 is allowed. The trial court is directed to re-call P.W.1 and permit him to adduce further evidence with regard to the aforesaid email dated 20.01.2015 and its attachments and give an opportunity to the respondent/accused to cross examine the said witness with regard to the aforesaid documents and thereafter if the accused makes a request to permit him to adduce rebuttal evidence, the trial court can permit him to adduce rebuttal evidence with regard to the aforesaid e-mail and its attachments and thereafter dispose of the case in C.C.No.1007 of 2017 in accordance with law. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

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Sub Assistant Registrar

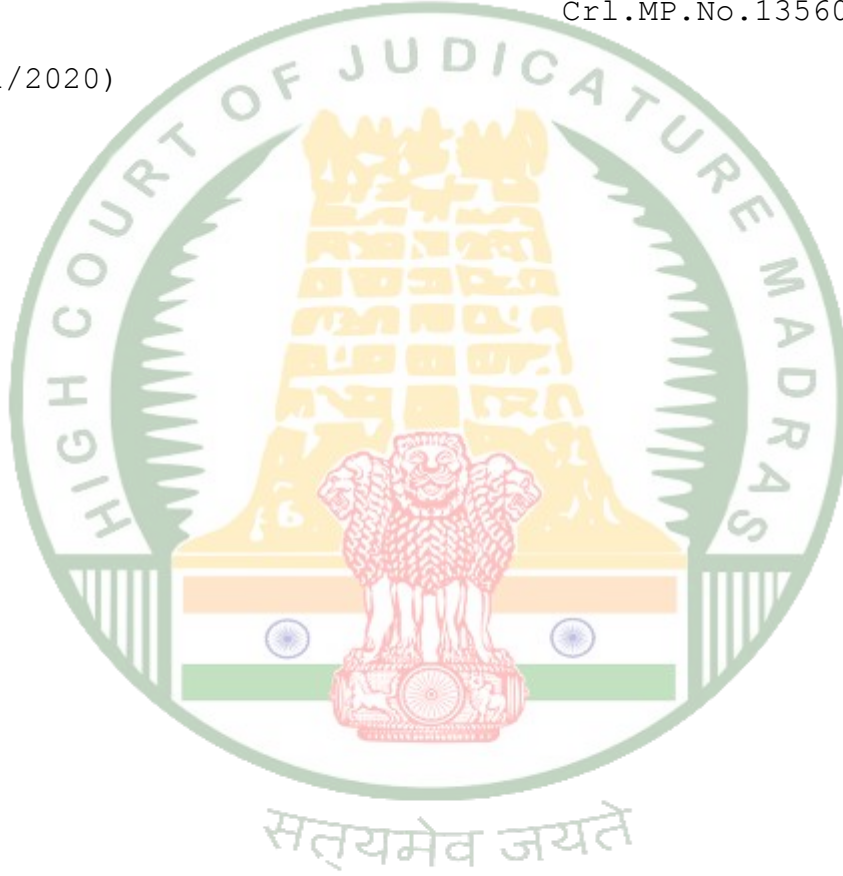
Vv
To

The IV Fast Track Metropolitan Magistrate
George Town,
Chennai.

+1cc to Mr.R.Priya kumar , Advocate SR.No. 106382
+1cc to Mr.Ravichandran , Advocate SR.No. 105972
(24/02/2020)

CrI.OP.No.25384 of 2019
and
CrI.MP.No.13560 of 2019

A.SK(23/01/2020)



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