

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:23.01.2019

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH
Crl.O.P.No.30359 of 2019
and
Crl.M.P.No.17902 of 2018

A.Liakathali Khan

... Petitioner/Accused

Vs.

Sree Gokulam Chits & Finance Com (p) Ltd.,
Having registered office at Chennai
Divisional Office at
59/1-A, 1st Floor, Mayanoor Main Road,
Near ARRS Multiplex, Salem
Rep By its Power of attorney
P.Kaliappan. ... Respondent/Complainant

Prayer: Criminal Original petition filed under Section 482 of
the Criminal Procedure Code, to set aside the order dated
16.11.2018 passed in C.M.P.No.3809 of 2018 in S.T.C.No.40 of
2016, on the file of Judicial Magistrate No.5, Salem and to
allow the Criminal Original Petition.

For Petitioner : Mr.C.Prabakaran

For Respondent : M/s.T.Shriba for
Surana & Surana,
G.Kalyan Jhabakh

O R D E R

This petition has been filed challenging the order passed
by the Court below dismissing the petition filed under Section
311 of Cr.P.C to re-call and cross examine P.W.1.

2. The petitioner is facing trial before the Court below
for an offence under Section 138 of Negotiable Instruments Act.
The complainant examined himself as P.W.1 and the petitioner
failed to cross examine P.W.1 on the same day. Therefore, the
evidence was closed. The petitioner filed a petition under
Section 311 of Cr.P.C seeking to re-call P.W.1 for cross
examination. This petition was allowed by the Court below by
imposing the cost of Rs.500/- payable on or before 15.11.2018.
This cost was not paid on time and therefore, the petition
itself came to be dismissed on 16.11.2018. Aggrieved by the
same, the present petition has been filed.

3. The learned counsel for the petitioner submitted that one last opportunity may be given to the petitioner to cross-examine P.W.1. The learned counsel further submitted that a time limit may be fixed by this Court for the disposal of the complaint.

4. Mr.G.Kalyan Jhabakh, appearing for the respondent would submit that the petitioner was given sufficient opportunity to cross examine P.W.1 and the petitioner failed to cross-examine P.W.1 and also failed to pay the cost imposed by the Court below. The learned counsel further submitted that the petitioner has been dragging on the complaint from the year 2015 onwards. Therefore, the order passed by the Court below should not be interfere with by this Court.

5. This Court has carefully considered the submissions made on the either side.

6. It is true that the petitioner was given sufficient opportunity to cross examine P.W.1. Even, the megre cost imposed by the Court below was not paid by the petitioner and therefore the Court below was left with no other option except to dismiss the petition filed by the petitioner. However, taking in to consideration the facts and circumstances of the case, this Court is of the considered view that one last opportunity can be given to the petitioner to cross examine P.W.1. This is more so, since the petitioner as the accused person has to rebut the presumption under Section 139 of Negotiable Instruments Act.

7. In view of the above, the order passed by the Court below in C.M.P.No.3809 of 2018, dated 16.11.2018 is hereby set aside.

8. The Court below is directed to fix a date for appearance of P.W.1 and on the same day, the petitioner has to cross examine P.W.1. If for any reason, the petitioner fails to cross examine P.W.1 on the date of appearance, the petitioner shall forfeit his right to re-call P.W.1 in future.

9. The petitioner is directed to pay a sum of Rs.3,000/- to P.W.1 on the date of appearance.

10. The learned counsel for the petitioner submitted that the case has also been posted on 22.02.2019.

11. The Court below is directed to call the case on 04.02.2019 and on the said date P.W.1 shall be present before the Court and on the same day, the petitioner is directed to cross-examine P.W.1.

12. In the result, this Criminal Original Petition is allowed and the Court below is directed to complete the proceedings within a period of two months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dss/nmm

To

1. The Judicial Magistrate No.5,
Salem.

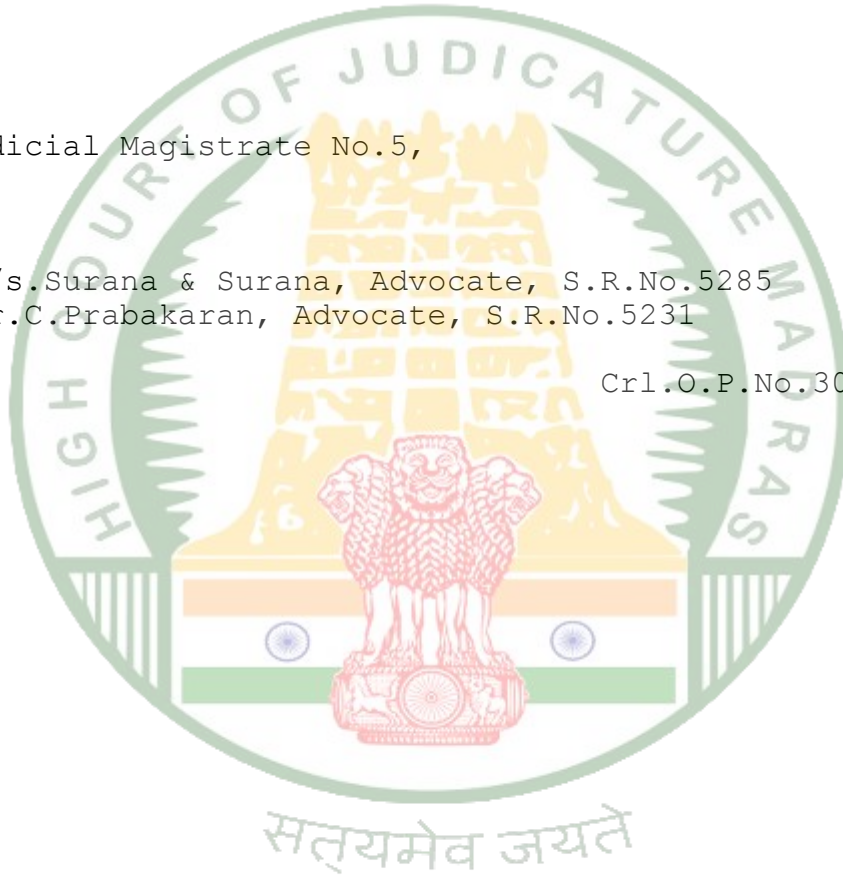
+1cc to M/s.Surana & Surana, Advocate, S.R.No.5285

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.5231

Crl.O.P.No.30359 of 2019

RJI (CO)

rrs



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