



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.09.2019

CORAM

THE HONOURABLE MR. JUSTICE **N. ANAND VENKATESH**

CRL.O.P(MD).No.14369 of 2017 and
CrI.M.P(MD).No. 9593 of 2017

A. Prema

Petitioner /Accused

Vs.

S. Devi

Respondent/Complainant

Prayer : This petition is filed under Section 482 Cr.P.C., to call for the records pertaining to the order passed by the learned Judicial Magistrate Cum District Munsiff, Boothapandy in CMP.No. 3048 of 2017 in STC.No. 467 of 2016, dated 06.09.2017 and set aside the same and may direct the trial Court to permit the petitioner for cross examining PW.1 and PW.2 to substantiate fair trial discipline in the interest of justice.

For Petitioner : Mr.K.P. Narayanakumar

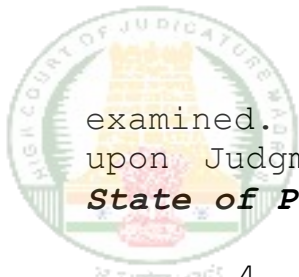
For Respondent : Mr.N. Dilipkumar

ORDER

This petition has been filed challenging the order passed by the Court below dismissing the application filed under Section 311 Cr.P.C., to recall PW.1 for cross examination.

2. The petitioner is facing trial before the Court below for the offence under Section 138 of Negotiable Instruments Act. The complainant examined herself as PW.1 and since she was not cross examined, evidence was closed and thereafter, Bank Manager was examined as PW.2 and the evidence on the side of the complainant was closed. The petitioner was questioned under Section 313 Cr.P.C., and the case was posted for defence evidence. At this stage, the petitioner filed an application under Section 311 Cr.P.C., to recall PW.1 for cross examination.

3. The Court below has dismissed the application mainly on the ground that sufficient opportunity was given to the petitioner to cross examine PW.1 and in spite of the same PW.1 was not cross



examined. The Court below in order to support its order has relied upon Judgment of the Hon'ble Supreme Court in ***Vinod Kumar Vs. State of Punjab reported in 2015(3) SCC 220.***

4. The learned counsel for the petitioner submitted that two complaints came to be given against the petitioner one by father and the other by daughter and the same are pending in STC Nos.466 and 467 of 2016, before the learned Judicial Magistrate, Boothapandi. The learned counsel further submitted that the burden has been cast upon the petitioner and the same has to be rebutted under Section 139 of Negotiable Instruments Act and therefore, one last opportunity can be given to the petitioner to cross examine PW.1. The learned counsel submitted that this Court can fix the time limit for completion of the proceedings and that the petitioner will not delay the disposal of the case.

5. The learned counsel appearing for the respondent submitted that petitioner is intentionally dragging on the proceedings and sufficient opportunities were given to the petitioner to cross examine PW.1 and in spite of the same, PW.1 was not cross examined. The learned counsel further submitted that there are no reasons to interfere with the orders passed by the Court below and therefore, the present Criminal Original Petition has to be dismissed.

6. This Court has carefully considered the submissions made on either side and materials available on record.

7. It is true that the witnesses will have to be cross examined on the same day, when they are examined in chief and the same has been reiterated by the Hon'ble Supreme Court in many Judgments. In the present case, the petitioner is facing two complaints one from the father and the another one from daughter that apart, the burden is cast upon the petitioner to rebut the legal presumption under Section 139 of Negotiable Instruments Act. Therefore, one last opportunity can be given to petitioner to cross examine PW.1.

8. The order passed by the Court below in Crl.M.P.No.3048 of 2017, dated 06.09.2017 is hereby set aside. The Court below is directed to fix a date for the appearance of the complainant (PW.1) and on that day, the petitioner shall cross examine PW.1 and complete the Cross Examination on the same day. If for any reason, the petitioner fails to cross examine PW.1 on the date of appearance, the petitioner shall forfeit her right to recall PW.1 for cross examination in future. The petitioner is directed to pay a cost of Rs.1,500/- (Rupees One Thousand and Five Hundred Only) to the complainant on the date of her appearance.



9. In the result, this Criminal Original Petition is allowed. 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.

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Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

trp

To

The Judicial Magistrate Cum District Munsiff, Boothapandy

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-86456[F] dated 13/09/2019)

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CrI.M.P(MD).No. 9593 of 2017
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