

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CrI.O.P.No.26499 of 2013

&

M.P.Nos.1 & 2 of 2013

N.S.Chelladurai

... Petitioner

Vs.

B.Murugan

... Respondent

Petition filed under Section 482 of Cr.P.C. to call for the records pertaining to the Order passed in M.P.No.2042 of 2013 in C.C.No.13586 of 2008 on the file of the Metropolitan Magistrate, Fast Track Court No.II, Egmore, Chennai dated 30.07.2013 and set aside the same.

For Petitioner : Mr.C.K.M.Appaji

For Respondent : --

O R D E R

This criminal original petition has been filed to call for the records pertaining to the Order passed in M.P.No.2042 of 2013 in C.C.No.13586 of 2008 on the file of the Metropolitan Magistrate, Fast Track Court No.II, Egmore, Chennai dated 30.07.2013 and set aside the same.

2. The respondent filed a complaint against the petitioner under section 138 of the Negotiable Instruments Act and same has been taken on file in C.C.No.13586 of 2008 by the Metropolitan Magistrate, Fast Tract Court No.II, Egmore, Chennai. During the pendency of the case, the petitioner filed a petition in M.P.No.2042 of 2013 to recall the witnesses P.W.1 and P.W.2 for effective cross examination of the witnesses and the said petition has been dismissed by the Court below. Challenging the same, the present petition has been filed.

3. The learned counsel appearing for the petitioner submitted that in order to ascertain the fact that the respondent has the capacity to advance the amount to the petitioner, it is necessary to recall the witnesses and cross examine them in this accept. The trial Court without

considering the submission of the petitioner, has dismissed the petition. Hence, prayed for allowing this petition.

4. Though no notice was Ordered to the respondent, this Court decided to dispose of this petition based on the materials available on record.

5. On a perusal of the impugned Order dated 30.07.2013 reveals that P.W.1 and P.W.2 were cross examined on 07.08.2009 and 7.10.2010 and after a lapse of 3 years, this petition to recall the witnesses has been filed in the year 2013. Further on perusal of the petition, it is seen that the petition has been filed in a printed regular format and no valid reason is assigned for recalling P.W.1 and P.W.2. Further, as there is no explanation for the delay in filing the petition to recall the witnesses. Admittedly, P.W.1 and P.W.2 were cross examined as early as in the year 2009 and 2010 and the petition to recall the witnesses has been filed only in the year 2013. Hence, I do not find any valid ground to set aside the Order passed by the Court below.

6. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

vrc

TO

The Metropolitan Magistrate,
Fast Track Court No.II,
Egmore, Chennai.

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RK (CO)
GN (14/02/2020)