

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2020

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.3311 of 2020
and CRL.M.P.No.1937 of 2020

1. Francis Switch Gear & Controls,
Represented by its Managing Partner,
A.K.Sagayanathan
S/o.Kannan,
Residing at D.No.17, Murugan Nagar,
Mettur Dam-636 403,
Mettur Taluk, Salem District.

2. A.K.Sagayanathan
Francis Switch Gear & Controls,
Managing Partner,
Residing at D.No.17, Murugan Nagar,
Mettur Dam-636 403,
Mettur Taluk, Salem District. Petitioners/Accused 1 &
2

Vs.

Dr.Venkata Baskaran ...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records relating to the proceedings of the order in C.M.P.No.8522 of 2019 in STC No.458 of 2016 on the file of the Judicial Magistrate No.I, Gopichettipalayam, Erode District and set aside the same.

For Petitioners: M/s.M.Senthilkumar
Mr.B.Sridhar

For Respondent : Mr.M.Arunkumar

ORDER

This Criminal Original Petition has been filed to set aside the order in C.M.P.No.8522 of 2019 in STC No.458 of 2016 on the file of the Judicial Magistrate No.I, Gopichettipalayam, Erode District.

2. The learned counsel for the petitioner submitted that the petitioners are accused in the complaint lodged by the respondent herein for the offence punishable under Section 138 of Negotiable Instruments Act. Though the petitioners cross-examined the respondent, however, they failed to mark the plaint in O.S.No.489 of 2016, while cross examining the

respondent. The plaint in O.S.No.489 of 2016 is a vital document and it is very helpful for the petitioners to defend the case in S.T.C.No.458 of 2016.

3. Per contra, the learned counsel for the respondent would submit that the C.C. is of the year 2016, the respondent was examined in chief very long before and thereafter, the petitioners were given enough opportunity to cross examine PW1. Even then, the respondent did not particularly cross examined PW1. Therefore, the petitioners have filed petition to re-call under Section 311 of Cr.P.C., and the same was allowed on 29.06.2019. Thereafter, on 10.10.2019, the petitioners partly cross examined and again the petitioners repeatedly took time for further cross examination. Finally, on 25.11.2019 they completed cross examination and posted the matter for arguments. Even then, the petitioners did not argue the matter and at the time of the trial, the petitioners had filed the petition in C.M.P.No.8522 of 2019 for cross examination of PW1 and to mark the plaint in O.S.No.489 of 2016. In fact, he further submitted that the petitioners are plaintiffs in O.S.No.489 of 2016, therefore, they would have easily mark the plaint while cross-examining the respondent. Therefore, the present petition is filed to drag the proceedings and it is mere abuse of process of law.

4. Heard M.Senthilkumar, learned counsel for the petitioners and Mr.M.Arunkumar, learned counsel appearing for the respondent.

5. The petitioners are accused in S.T.C.No.458 of 2016 lodged by the respondent herein for the offences punishable under Section 138 of Negotiable Instruments Act. The respondent was cross examined particularly on 25.11.2019. It is also seen that the petitioners were given enough opportunity to cross examine PW1 and even then they did not cross examine PW1 and therefore, evidences of complainant are closed and thereafter, the petition was filed by the petitioner under Section 311 Cr.P.C., and the same was allowed for cross examination of PW1 and after fully cross examination of PW1, the matter was posted for arguments. At that stage, the petitioners again filed the petition to re-call under Section 311 of Cr.P.C., to mark the suit in O.S.No.489 of 2016 on the file of the District Munsif Court, Erode.

6. It is seen that the document which is intended to mark by the petitioner is a plaint in O.S.No.489 of 2016, which is nothing to do in S.T.C.No.458 of 2016, since the suit was filed for permanent injunction and as such there is no relevance to the case on hand and therefore, the trial court has rightly dismissed the petition filed by the petitioner. This Court is also not find any infirmity or illegality in the order passed by the trial Court.

7. Accordingly, this Criminal Original Petition is dismissed. However, the petitioners are at liberty to argue the case on the strength of the plaint in O.S.No.489 of 2016.

The trial Court is directed to complete the trial within a period of three months from the date of receipt of a copy of this Order. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (ADI MDU)

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Sub Assistant Registrar

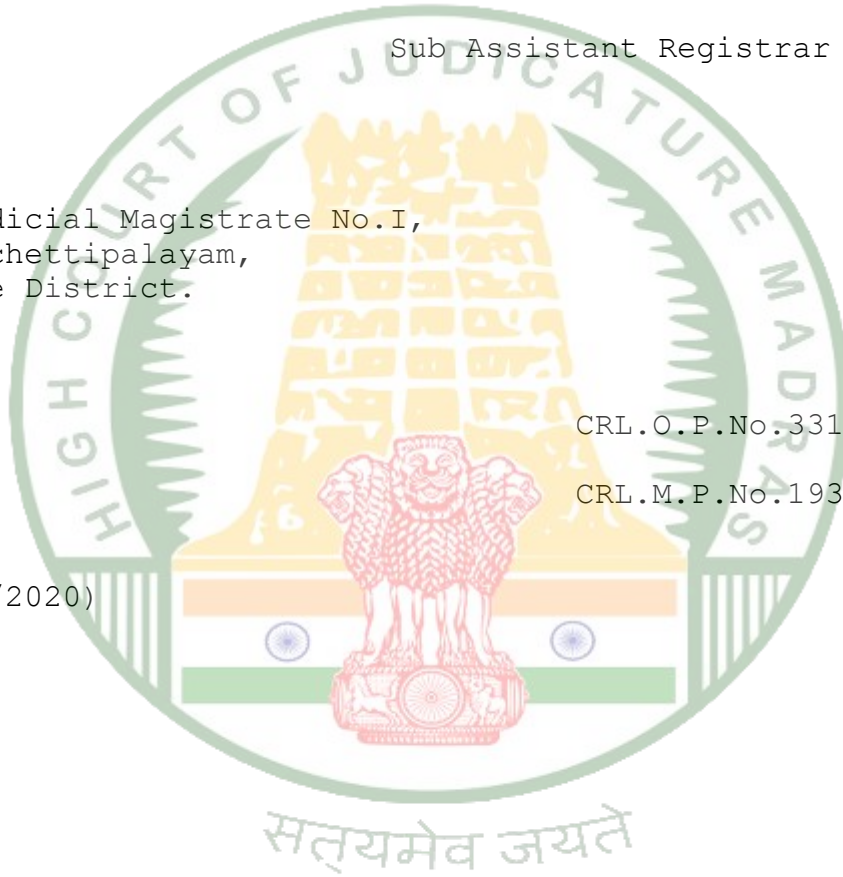
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To

1. The Judicial Magistrate No.I,
Gopichettipalayam,
Erode District.

CRL.O.P.No.3311 of 2020
and
CRL.M.P.No.1937 of 2020

SKS (CO)
GMY (23/09/2020)



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