

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN, J.

Crl.O.P.No.5229 of 2020
and Crl.M.P.No.2969 of 2020

Mythili ... Petitioner/Accused

.Vs.

Manimekalai

... Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the order of the learned Judicial Magistrate No.I, Gobichettipalayam, Erode District, made in Crl.M.P.No.830 of 2020 in S.T.C.No.951 of 2018, on his file dated 27.02.2020 in dismissing the petition filed by the petitioner herein under Section 311 of Cr.P.C and restore the said petition on the file of the learned Magistrate.

For Petitioner: Mr.M.Purusothaman

For Respondent: Mr.A.Mohamed Ismail

O R D E R

This petition has been filed seeking to set aside the order of the learned Judicial Magistrate No.I, Gobichettipalayam, Erode District, made in Crl.M.P.No.830 of 2020 in S.T.C.No.951 of 2018, dated 27.02.2020 in dismissing the petition filed by the petitioner herein under Section 311 of Cr.P.C and recall the respondent/PW.1 for further cross examination.

2. The learned counsel for the petitioner would submit that the respondent herein filed a complaint for offence punishable under Section 138 of Negotiable Instruments Act as against the petitioner. The respondent was examined as PW.1 before the Trial Court and infact the earlier counsel on behalf of the petitioner cross examined the respondent. He further submitted that the vital questions were failed to be examined by the counsel, who appeared earlier on behalf of the petitioner herein. The petitioner being a Government Doctor could not be

able to properly instruct the counsel to cross examine the respondent herein. Therefore, she may be given one more opportunity to examine PW.1.

3. The learned counsel for the respondent would submit that on the complaint lodged by the respondent herein for the offence under Section 138 of Negotiable Instruments Act, the respondent was examined as PW.1. Thereafter, the respondent was also cross examined by the petitioner on 26.09.2019 and 10.10.2019 in a detailed manner. Thereafter, the matter was posted for further cross examination, on the day fixed by the trial court. The petitioner failed to cross examine and as such PW.1's evidence was closed. Again, the petitioner filed a petition under Section 311 of Cr.P.C and the same was allowed. Thereafter, the petitioner cross examined PW.1 on 26.09.2019 and 10.10.2019. Therefore, this petition has been filed only to drag on the proceedings and nothing else. Therefore, she sought for dismissal of the petition.

4. It is seen that the complaint was lodged by the respondent herein for the offence under Section 138 of Negotiable Instruments Act. The respondent was cross examined as PW.1 and she was also cross examined by the petitioner on filing a petition under Section 311 of Cr.P.C. Now, the learned counsel for the petitioner would submit that the petitioner being a Doctor, she could not able to properly instruct the counsel appearing on behalf of the respondent.

5. Considering the facts and circumstances of the case, this Court feels that the petitioner may be given one more opportunity to put fourth her defence. Accordingly, the order dated 27.02.2020, passed by the learned Judicial Magistrate No.I, Gobichettipalayam, Erode, in CrI.M.P.No.830 of 2020 in S.T.C.No.951 of 2018, is hereby set aside and the petitioner is permitted to cross examine P.W.1 on the next hearing date by payment of necessary charges. If the petitioner fails to cross-examine P.W.1, the trial Court is directed to proceed with trial in accordance with law.

6. With the above directions, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

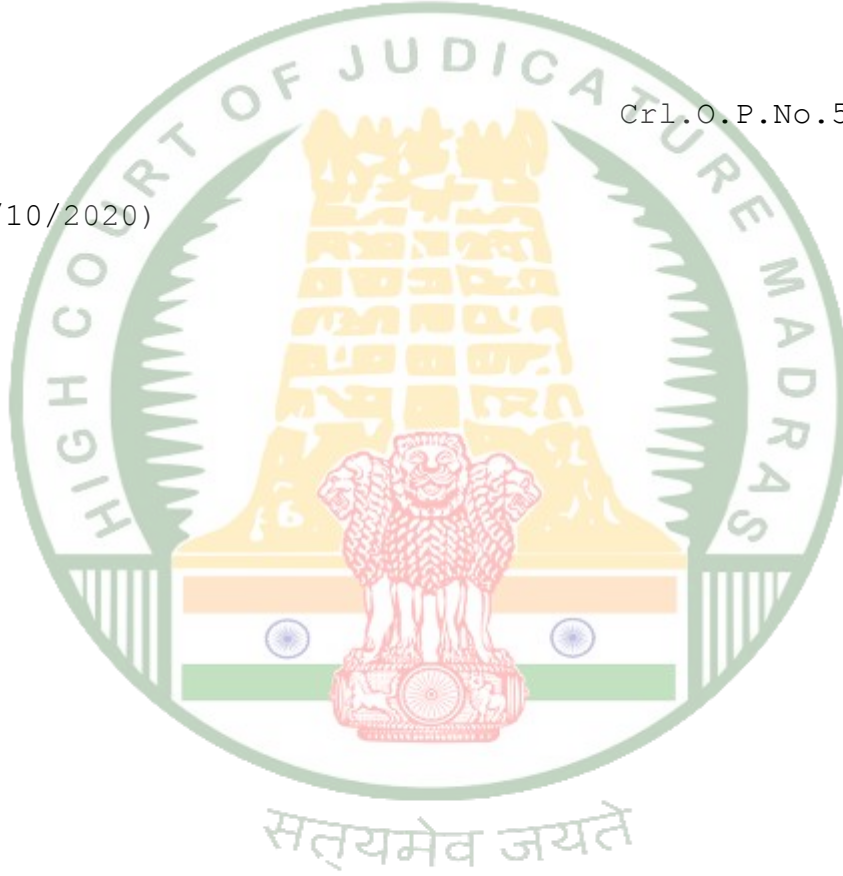
To

1. The Judicial Magistrate No.I,
Gobichettipalayam,
Erode District.
2. The Additional Public Prosecutor,
High Court of Madras.

+lcc to Mr.M.Purushothaman, Advocate, Sr.no.28608

Crl.O.P.No.5229 of 2020

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