

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2021

CORAM :

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

CrI.O.P.No.1456 of 2021

P.G.Murugesan

.. Petitioner

Vs.

Premavathi

.. Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records in C.C.No.97 of 2017 on the file of the Judicial Magistrate, Palacode and set aside the order dated 29.10.2020 dismissing the order passed in Cr.M.P.No.1545 of 2020 and thus render justice.

For Petitioner : Mr.V.Sakkarapani

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 PW2 and PW3 for cross-examination.

2.The respondent filed a complaint against the petitioner for an offence under Section 138 of the Negotiable Instruments Act. The complaint was filed in the year 2013 before the Fast Track Court, Dharmapuri and thereafter, it was transferred to the learned Judicial Magistrate Court, Palacode and renumbered as C.C.No.97 of 2017. The respondent examined herself as PW1 and the Bank Managers were examined as PW2 and PW3. None of these witnesses were cross-examined by the petitioner.

3.It is seen from records that the petitioner had earlier filed an application under Section 311 Cr.P.C. to recall and cross-examine PW1 in CrI.M.P.No.3669 of 2019. This application was allowed by the Court below by an order dated 16.08.2019. For the reasons best known to the petitioner, the petitioner did not deem it fit to recall PW2 and PW3 also in the same application. Instead the petitioner waited for some time and filed yet another application to recall PW2 and PW3 for cross-examination. The Court below dismissed the said application on the ground that the petitioner in spite of having sufficient opportunity to recall PW2 and PW3, failed to utilize the opportunity and therefore, the Court below thought it fit to dismiss the application. Aggrieved by the same, the present petition has been filed before this Court.

absolutely no illegality or infirmity in the order passed by the Court below. The Court below was perfectly right in dismissing the application since, the petitioner while filing the earlier application to recall PW1, could have also recalled PW2 and PW3 and cross-examined them. The petitioner cannot be permitted to file applications in installment and therefore, the Court below was right in dismissing the application filed by the petitioner and there is absolutely no ground to interfere with the order passed by the Court below.

6.In the result, this criminal original petition is dismissed and there shall be a direction to the Court below to complete the proceedings in C.C.No.97 of 2017, within a period of two weeks from the date of receipt of copy of this order.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ssr  
To

1. The Judicial Magistrate,  
Palacode.
2. The Public Prosecutor,  
High Court, Madras.

A.SK(25.02.2021)

Cr1.O.P.No.1456 of 2021

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