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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.O.P.NO.20619 OF 2018

AND

CRL.M.P.NO. 11075 OF 2018

S.Mohan

.. Petitioner/Accused

Vs.

S.Rammoorthy

.. Respondent/Complainant

Prayer: Petition filed under Section 482 of Cr.P.C., to set aside the order dated 12.07.2018 passed in C.M.P.No.443 of 2018 in C.C.No.53 of 2017 on the file of the Judicial Magistrate-I, Tindivanam and allow the above Criminal Original Petition.

For Petitioner : Mr.V.V.Sairam

For Respondents : No Appearance

O R D E R

The petitioner has filed this petition seeking to set aside the order dated 12.07.2018 passed in C.M.P.No.443 of 2018 in C.C.No.53 of 2017 on the file of the Judicial Magistrate-I, Tindivanam and allow the above Criminal Original Petition.

2. It is the case of the petitioner that the petitioner gave a sum of Rs.16,00,000/- in two instalments to the respondent for the purpose of rehabilitation of School where the respondent is working as a teacher and he did not the return the money received from the petitioner. In order to settle the amount, the respondent issued cheques for a sum of Rs.7 Lakhs and Rs.9 Lakhs to the petitioner vide Cheque Nos.422766 & 422765 and the cheques were dishonoured by the bank due to



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insufficiency of funds. Though the petitioner issued a legal notice to the respondent to recover the amount, there was no proper reply from him. Hence the petitioner filed a petition u/s 138 & 142 of the Negotiable Instruments Act on the file of Judicial Magistrate-I, Tindivanam in which summons were issued to the respondent therein and the case was taken up for trial. At the stage of examination of witnesses, P.W.1 was cross examined and, thereafter, a petition was filed for once again recalling P.W.1 for further cross examination by filing petition u/s 311 Cr.P.C., which was dismissed by the trial court against which the present petition is filed.

3. The counsel for the petitioner submits that the C.M.P.No.443 of 2018 was filed before the Trial Court u/s 311 of Cr.P.C to recall the PW1, for the purpose of cross examination of P.W.1 by putting before him certain relevant documents, which were not available when P.W.1 was cross examined at the first instance. However, the trial court, without appreciating the case of the petitioner herein, has dismissed the petition. It is the submission of the learned counsel that the recall of P.W.1 sought for by the petitioner was not for the purpose of prolonging the case, but only to establish his case through proper documentary evidence and if the recall is not permitted, the petitioner would be put to grave prejudice and to show his bona fides, the petitioner is ready to pay any amount as may be fixed by this Court towards the inconvenience caused to PW1.

4. Though the notice was served, there is no representation for the respondent.

5. A perusal of the materials available on record reveal that the petitioner herein had cross examined P.W.1. However, for the purpose of cross examining P.W.1 on certain other material particulars, recall has been sought for by filing a petition u/s 311 Cr.P.C. The trial court, mechanically, has dismissed the said petition, without advertting to the case of the petitioner herein. However, in the absence of the respondent appearing before this Court, this Court, without going into the merits of the contention, but considering the pendency of the case before the Trial Court, is inclined to dispose of the case and set aside the order passed in C.M.P.No.443 of 2018 by directing the petitioner to deposit a sum of Rs.10,000/- to the credit of C.C.No.53 of 2017 which



shall be disbursed to P.W.1 for the purpose of his expenses that may be incurred by him towards coming once again for the purpose of cross examination. The Trial Court shall fix the hearing date for appearance of PW1 within a period of 3 weeks from the date of receipt of copy of this order and the petitioner shall complete the cross examination on the said date fixed by the trial court.

6. Accordingly, this Criminal Original Petition is allowed with the above direction.

Sd/-
Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

NHS

To

1. The Judicial Magistrate-I,
Tindivanam.
2. The Chief Judicial Magistrate,
Villupuram.

+1cc to Mr.V.V.Sairam, Advocate, S.R.No.48429

Cr1.O.P.No.20619 of 2018 &
Cr1.M.P.No.11075 of 2018

RSV(CO)
RLP(22/10/2021)