

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2021

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.NO.17510 OF 2020

AND

CRL.M.P.NO.6762 OF 2020

Mr.Sherifa,
S/o.Galif Shahib.

... Petitioner

Vs.

Mr.Chenchu Raju,
S/o.Narayana Raju

...Respondent

Prayer:-

Criminal Original Petition filed under Section 482 Cr.P.C. to stay call for the records in Crl.M.P.No.7085 of 2019 in C.C.No.1145 of 2015 before Hon'ble Metropolitan Magistrate, Fast Track Court, Magisterial level-IV, George Town, Chennai-01 pending disposal of the Criminal Original Petition and pass orders.

For Petitioner : Mr.D.Kingslin

O R D E R

This petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioner under Section 311 Cr.P.C. to re-open and re-call P.W.1 for further examination and for marking further documents.

2.The petitioner is the complainant in a complaint filed under Section 138 of Negotiable Instruments Act, 1881. It is seen from records that the complaint was filed in the year 2015. The petitioner examined herself as P.W.1 and marked documents and she was also cross examined by the respondent in the year 2016 itself. Thereafter, the Court below closed the evidence and posted the case for questioning.

3.The respondent filed a petition to re-open for further examination of the petitioner and this application was dismissed and it was also confirmed by this Court.

4.The matter was at the stage of arguments and the petitioner seems to have changed her counsel and after the new counsel took charge, one more application has been filed to re-open for the purpose of further examination of P.W.1 and for marking additional documents. This application came to be dismissed by the Court below by an order dated 06.03.2020. Aggrieved by the same, the present petition has been filed.

5.The learned counsel for the petitioner submitted that the Court below erred in giving a finding to the effect that the petitioner was attempting to set up a new case even without properly appreciating the purpose for which the petitioner had sought for the re-opening of the evidence. The learned counsel further submitted that the petitioner must be given an opportunity to establish her case and such a right cannot be taken away on mere surmises. The learned counsel submitted that some time limit can also be fixed by this Court for the disposal of the application.

6.This Court has carefully considered the submissions made by the counsel for the petitioner and the materials available on record.

7.This Court does not find any illegality or infirmity in the order passed by the Court below. The Court below has given cogent reasons as to why the application filed under Section 311 Cr.P.C. by the petitioner cannot be entertained and more particularly only on the ground that a new counsel has taken charge of the case on behalf of the petitioner.

8.It has been repeatedly held that a mere change of counsel cannot be a ground for re-opening and re-calling any witnesses. Useful reference can be made to the judgment of the Hon'ble Supreme Court in the case of State of Haryana Vs.Ram Mehar and others reported in 2017 1 MLJ (crl) 437. In the present case, the proceedings are pending from the year 2015 and after nearly three years when the case was at the stage of final arguments, the petitioner has chosen to file a petition to re-open and recall P.W.1 for further examination and to mark additional documents. There is absolutely no justification to entertain such an application and the Court below was perfectly right in dismissing the application.

9.In the result, this Court does not find any merit to interfere in the order passed by the Court below. Accordingly, this Criminal Original Petition is dismissed.

10.The Court below is directed to complete the proceedings in C.C.No.1145 of 2015, within a period of three months from the date of receipt of copy of this order.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

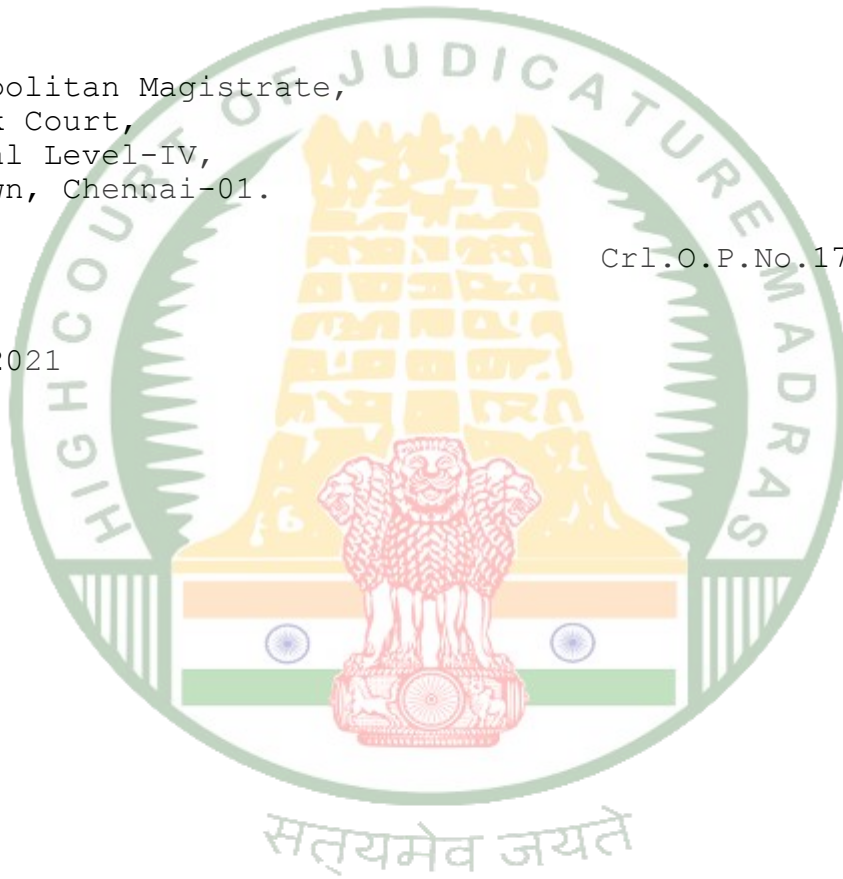
rm

To

The Metropolitan Magistrate,
Fast Track Court,
Magisterial Level-IV,
George Town, Chennai-01.

Crl.O.P.No.17510 of 2020

BR(CO)
CS/17/02/2021



WEB COPY