



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.17738 of 2021

and

CRL.M.P.No.9736 of 2021

Chitramughi

W/o. Late N.Ravanadoss,

...Petitioner

Versus

S.K.Srinivasan

S/o S.Kandavelu

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 01.03.2021 passed by the learned Fast Track Court I Judge (Metropolitan Magistrate) at Allikulam, Chennai in Crl.M.P.No.2267 of 2020 in C.C.No.3392 of 2012.

For Petitioner : Mr.Jayasimhan T.Rajasuriya

For Respondent : Nil

ORDER

(This case has been heard through video conference)

The petitioner, who is an accused in C.C.No.3392 of 2012 on the file of the learned Fast Track Court No.I Judge (Metropolitan Magistrate) at Allikulam, Chennai, for an offence under Section 138 of Negotiable Instruments Act, has filed this petition.

2. The contention of the petitioner is that the respondent/complainant had filed a petition in C.M.P.No.2267 of 2020 in C.C.No.3392 of 2012 under section 311 of Cr.P.C seeking to examine the witness S.K.Gowri Shankar, the brother of the respondent as additional witness. This has been filed at the penultimate stage of addressing the arguments. The trial court has allowed the same. The same was opposed by the respondent stating that it was filed only to fill up the lacunae which is opposed to fair trial.



3. From the perusal of the lower court order, it is seen that a specific question has been put to the petitioner in whose presence the respondent had handed over money to the petitioner and the cheque was received by the petitioner. The specific answer for both the questions is given by the brother of the respondent S.K.Gowri Shankar. The said Gowri Shankar had not been examined. Now, examining the Gowri Shankar would not amount to fill up the lacunae. In the case of Rajendra Prasad Vs Narcotic Cell (1999) SCC Cr1 1062. The Apex court had held that that the petition under section 311 of Cr.P.C can be filed at any stage and examination of the witnesses cannot be stated as filling up of lacunae. For the reason, the petitioner is given an opportunity to cross examine the witness and it is only for arriving at the just decision of the case, such petition is allowed. In view of the same, the petitioner would get an opportunity to cross examine Gowri Shankar and no prejudice would be caused to the petitioner.

4. In view of the same, this petition is dismissed confirming the order of the trial court. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

tsi/nr

To:
The Metropolitan Magistrate,
The Fast Track Court I,
Allikulam, Chennai.

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and
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RK(CO)
LS(20/10/2021)