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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.20668 & 20734 of 2021 and
Crl.M.P.Nos.11264 & 11294 of 2021

D.Suresh,
S/o.Dharmar,
Proprietor, S.K.Garments,
1/556-3A, Nanjappan Nagar,
Boyampalayam, P.N.Road,
Tirrupur.

... Petitioner in both cases

Vs.

TTRK Textiles India (P) Ltd.,
Rep by its Authorized,
Shareholder / Administrative Officer,
Sivachalapathi, S/o.Govindasamy,
Kuttipalayam Road, Pachapalayam Village,
Kangeyam Tk.,
Tiruppur.

... Respondent/Complainant

COMMON PRAYER: Criminal Original Petitions are filed under Section 482 of the Code of Criminal Procedure, to set aside the orders, dated 07.09.2021 made in Crl.M.P.Nos.1291 & 1290 of 2021 in S.T.C.No.366 of 2018 on the file of the Judicial Magistrate, Kangeyam and modify the condition dated 01.09.2021 in directing the petitioner to pay cost of Rs.2,000/- to the respondent, by extending it for two weeks time.

For Petitioner
in both cases : Mr.AR.M.Arunachalam

COMMON ORDER

Criminal Original Petitions have been filed to set aside the orders, dated 07.09.2021, made in Crl.M.P.Nos.1290 & 1291 of 2021 in S.T.C.No.366 of 2018 passed by the learned Judicial



Magistrate, Kangeyam and modify the condition dated 01.09.2021 in directing the petitioner to pay cost of Rs.2,000/- to the respondent.

2.The learned counsel for the petitioner submitted that the petitioner filed a petition under Section 311 Cr.P.C., before the trial Court in CrI.M.P.No.1290 of 2021 in S.T.C.No.366 of 2018 and also filed a petition in CrI.M.P.No.1291 of 2021 in S.T.C.No.366 of 2018 to reopen the defence side evidence. The trial Court, by order, dated 01.09.2021 allowed both the petitions with a condition that the petitioner to pay Rs.4,000/- as cost to the respondent on or before 06.09.2021 and posted the case for compliance on 07.09.2021. On 07.09.2021, when the case was called, there was no representation for the petitioner and the case was passed over and thereafter, when it was called again at about 03.25 p.m., no representation for the petitioner and hence, the trial Court dismissed both the orders passed on 01.09.2021.

3.The learned counsel further submitted that due to sudden ill-health and unavoidable reason, the petitioner was unable to appear before the trial Court and unable to make arrangement for paying the cost. Now, the case is posted for arguments on 15.11.2021. Without cross examination of PW1, the case of the petitioner could not be put forth, more so when the presumption is starring against him.

4.Today, the learned counsel for the petitioner undertakes that by 15.11.2021, he would pay the cost of Rs.4,000/- to the respondent and thereafter, within a week i.e., 22.11.2021, he would cross examine PW1 without seeking any adjournment.

5.On considering the submissions and undertaking given by the learned counsel for the petitioner and also finding that the trial Court had already permitted the petitioner to recall PW1 for cross examination and reopened the defence side evidence and the same have been dismissed only for non payment of cost, this Court is inclined to permit the petitioner to cross examine PW1. The defence of the petitioner can be putforth only by way of cross examination.

6.In view of the above, the petitioner is directed to pay the cost of Rs.4,000/- to the respondent, as directed by the trial Court, on or before 15.11.2021. On such payment, the trial Court is directed to fix a date for cross examination of PW1. The petitioner is to cross examine PW1 on the day when he appears without seeking any adjournment.

7.Hence, the orders, dated 07.09.2021, made in CrI.M.P.Nos.1290 & 1291 of 2021 in S.T.C.No.366 of 2018 passed by



the learned Judicial Magistrate, Kangeyam are set aside. Both Criminal Original Petitions are, accordingly, allowed. Consequently, the connected Miscellaneous Petitions are closed.

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Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

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To

The Judicial Magistrate,
Kangeyam.

+2CCs to Mr.AR.M.Arunachalam, Advocate SR.No.58126,58127

Cr1.O.P.Nos.20668 & 20734 of 2021

RK(CO)
B.VC(12/11/2021)