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Crl.OP.No4989 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.4989 of 2022

and

Crl.MP.No.2653 of 2022

Udhayakumar

.... Petitioner

Vs

Leelavathi Manikam

.... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to set aside the order dated 20.11.2021 passed in CMP No.302 of 2021 in STC No.512 of 2018 on the file of the Judicial Magistrate-cum-Fast Track Court – I, Erode.

For Petitioner : M/s.S.Veeraraghavan

For Respondent : No appearance

ORDER

This Criminal Original Petition has been filed to set aside the order dated 20.11.2021 passed in CMP No.302 of 2021 in STC No.512 of 2018 on the file of the Judicial Magistrate-cum-Fast Track Court – I, Erode,



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thereby dismissing the petition filed under Section 311 of Cr.P.C, to cross examine P.W.1.

2. Though notice has been served on the respondent and her name is printed in the cause list, there is no representation for the respondent either in person or through counsel.

3. The petitioner is an accused on the complaint lodged by the respondent for the offence punishable under Section 138 of Negotiable Instrument Act. The respondent filed a complaint and the same has been taken cognizance on 20.11.2021. He was examined as P.W.1 on 24.10.2019 and also marked as Exs.P1 to P5. Thereafter, the petitioner failed to cross examine P.W.1, though he was given ample opportunity. Thereafter, The petitioner filed a petition under Section 311 of Cr.P.C to recall for cross examination of P.W.1 and the same was allowed with cost. However, again the petitioner failed to cross examine P.W.1 due to COVID-19 pandemic circumstances. When the matter is posted for arguments, again the petitioner filed a petition under Section 311 of Cr.P.C. to recall P.W.1 for cross examination. It was dismissed by the Trial Court on the ground that the petitioner drag the matter for several



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years. Admittedly, the petitioner did not cross examine P.W.1 due to COVID-19 pandemic circumstances.

4. Considering the facts and circumstances of the case, this Court is of the opinion that the petitioner may be given an one more opportunity to defend his case properly.

5. In view of the above, the order dated 20.11.2021 passed in CMP No.302 of 2021 in STC No.512 of 2018 on the file of the Judicial Magistrate-cum-Fast Track Court – I, Erode, is hereby set aside. Accordingly, this Criminal Original Petition is allowed. The petitioner is permitted to cross examine P.W.1 on payment of cost of Rs.3,000/- to the respondent herein. It is made clear that, if the petitioner failed to cross examine P.W.1 on the date to be fixed by the Trial Court, the Trial Court is directed to proceed with the trial in accordance with law. Consequently, the connected miscellaneous petition is closed.

14.09.2022

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

Vv



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G.K.ILANTHIRAIYAN. J.

Vv

To

The Judicial Magistrate-cum-Fast Track Court – I,
Erode.

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