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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2022

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.8432 of 2021

and

Crl.M.P.No.5558 of 2021

A.Rosali @ Rose ... Petitioner

Vs.

J.Kasper ... Respondent

PRAYER: This Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the records relating to Crl.M.P.No.117 of 2020 in C.C.No.119 of 2017 pending on the file of learned Fast Track (Judicial Magistrate Level) at Alandur and set aside the same.

For Petitioner : Mr.K.Prasanthan

For Respondent : Mr.S.Sathyaray

O R D E R

The Criminal Original Petition has been filed to set aside the Crl.M.P.No.117 of 2020 in C.C.No.119 of 2017 pending on the file of learned Fast Track Court (Judicial Magistrate Level) at Alandur.

2. The petitioner/accused is facing trial for offence under Section 138 of the Negotiable Instruments Act,1988 in C.C.No.119 of 2017 on the file of Learned Fast Track Court (Judicial Magistrate Level), Alandur.

3. Brief facts of the case are as under:-

(i) The petitioner/accused is alleged to have borrowed money from the respondent/complainant on various dates for her business and her daughter's education, which had accumulated to the tune of Rs.7,55,000/- for which, she had issued a cheque bearing No.569245 dated 19.2.2017, however, when it was deposited with the bank, the cheque was dishonoured by



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the banker with an endorsement "fund insufficient". The notice sent by the respondent /complainant on 28.2.2017, though had been acknowledged by the petitioner on 2.3.2017, she had failed to repay the amount and hence, the respondent/complainant was constrained to approach the court.

(ii) The complaint was taken on file in C.C.No.119 of 2017 on the file of the Fast Track (Judicial Magistrate Level), Alandur and the respondent/complainant had examined himself as PW1 and he was cross-examined. Thereafter, the petitioner/accused examined herself as DW1 and examined one Prabha as DW2 and both of them were also cross-examined.

(iii) At this stage, the petitioner/accused filed an Application to re-open the evidence and examine herself as witness to mark some documents to establish her case that she had no necessity to borrow such a huge amount from the respondent/complainant and she had met out the expenses for her daughter's education by selling out her property and since she was not able to produce such documents when she was originally examined in chief.

(iv) The said Application came to be dismissed by the Trial Court for default, aggrieved against which, the petitioner has come up with the present petition.

4. Learned counsel appearing for the petitioner would submit that the petitioner/accused and the respondent/complainant are relatives and the petitioner had no necessity to borrow a sum of Rs.7,55,000/- as alleged by the respondent/complainant and she had met out the education expenses of her daughter by selling out her property and since she could not produce the documents in support of her case at the time of her examination in chief, she had filed the Application seeking to reopen her evidence and recall and examine her further. He would further submit that the petitioner/accused is facing an offence under Section 138 of Negotiable Instrument Act 1988 wherein a reverse burden is cast upon the accused as there is a statutory presumption in favour of the complainant under Section 118 and 139 of the Negotiable Instrument Act 1988 and thereby, in order to conduct a fair trial, the petitioner should be allowed to mark those documents to prove her case in defence. He would further submit that due to pandemic restrictions, she could not pursue her Application at the relevant time and thereby it came to be dismissed by the Trial Court. He would also submit that now the case stands posted to 22.03.2022 and if she is permitted to reopen her witness, the petitioner would examine herself as DW1 on the same day so as to ensure that the trial is completed at the earliest and in the interest of justice and fair trial, an opportunity



may be given to the petitioner.

5. Per contra, learned counsel appearing for the respondent/complainant would vehemently oppose by contending that on an earlier occasion, the petitioner had filed an Application to recall the witnesses, which was dismissed by the Trial Court and it was confirmed by this court. He would also submit that the Calendar Case is pending from the year 2017 and the version of the petitioner/accused that she could not produce the documents when she was examined in chief is unbelievable and only to drag on the proceedings, she had filed the Application to recall and reopen her witness and thereby the Trial Court had rightly dismissed the same.

6. Heard the learned counsel appearing for the parties and perused the materials available on record.

7. The petitioner is an accused facing trial for the offence under Section 138 of Negotiable Instrument Act wherein a reverse burden is cast on the petitioner to prove her case in defence. Therefore, this Court is of the view that an opportunity can be provided to the petitioner to examine herself by recalling her witness and mark the documents on imposing some cost and certain terms.

8. In view of the above, the order passed by the Trial Court in Crl.M.P.No.117 of 2020 is set aside and the Criminal Original Petition stands allowed. The petitioner/accused is permitted to re-open her evidence and examine herself as DW1 on 22.3.2022 itself without seeking any further adjournment and of course, the respondent/complainant is entitled to cross-examine the petitioner/accused thereafter. As a condition precedent, the petitioner shall pay a cost of Rs.5000/- to the respondent/complainant on 22.03.2022. The Trial court shall complete the trial and dispose the case in C.C.No.119 of 2017 within a period of two months from 22.03.2022.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar

ham/nti



To

1. The Fast Track
(Judicial Magistrate Level), Alandur.

+1cc to Mr.S.Sathyaraj, Advocate SR.No.9929

+2cc to Mr.M.Deivanandam, Advocate SR.No.10060

Cr1.O.P.No.8432 of 2021
and Cr1.M.P.No.5558 of 2021

AD(CO)
CB(10/03/2022)