

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2022

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRL.O.P.NO.16053 OF 2019

AND

CRL.M.P.NO.8010 OF 2019

N.Saraswathi
W/o Nagaraj

... Petitioner

Vs.

C.Siddheswaran
S/o Chinnannan

... Respondent

Prayer:

Criminal Original Petition filed under Section 482 Cr.P.C, to set aside the order dated 07.02.2018 passed in C.M.P.No.7989 of 2017 in S.T.C.No.168 of 2016 on the file of the Judicial Magistrate III, Salem and to allow the Criminal Original Petition.

For Petitioner : Mr.C.Prabakaran

For Respondent : No appearance

O R D E R

This Criminal Original Petition has been filed to set aside the order dated 07.02.2018 passed in C.M.P.No.7989 of 2017 in S.T.C.No.168 of 2016 on the file of the Judicial Magistrate III, Salem.

2. This Criminal Original Petition is filed by the accused in S.T.C.No.168 of 2016 on the file of the Judicial Magistrate No.III, Salem.

3. The impugned order dated 07.02.2018 indicates that the accused has filed an application under Section 311 Cr.P.C to recall P.Ws.1 and 4 for cross-examine alone. This application filed at the stage when the prosecution side evidence closed and

posted for defence side evidence. However, considering the legal position and in the interest of justice, the petition to recall P.Ws.1 and 4 was allowed on payment of costs of Rs.500/- payable on or before 06.02.2018. The petitioner herein was not able to pay the costs before 06.02.2018 and therefore when the matter was taken up on the next hearing i.e., on 07.02.2018, recording the non-compliance of the conditional order, the application to recall P.Ws.1 and 4 was dismissed. Against which, the present Criminal Original Petition has been filed stating that the learned Judge ought to have given opportunity to pay the costs. In view of the statutory presumption under section 139 of the Negotiable Instruments Act, the burden of proof is on the accused to prove that the cheque was not given to discharge any legally enforceable debt. She can prove her innocence only by cross examining P.W.1 and P.W.4, hence she should not be deprived of her valuable right to cross-examine the witnesses.

4. This Court considering the fact that for non-payment of costs of Rs.500/-, the application has been dismissed, however by filing this petition, the accused is able to delay the proceedings for another three years without any progress. When notice was served to the defacto complainant/respondent, he has received it on 24.06.2022, but there is no representation on his behalf.

5. Learned counsel for the petitioner states that the matter is pending on the file of the Judicial Magistrate No.III, Salem without any progress.

6. In view of the above, the petitioner is directed to pay costs of Rs.5000/- (Rupees Five thousand only) to the defacto complainant on or before 30.07.2022. On such payment, the Judicial Magistrate shall issue summons to recall P.Ws.1 and 4. The petitioner is further directed to cross-examine the witnesses on the same day of the appearance of the witnesses and should not seek any adjournment.

7. With the abovesaid directions, the Criminal Original Petition is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mfa

To

The Judicial Magistrate III, Salem.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.43510

Crl.O.P.No.16053 of 2019

and

Crl.M.P.No.8010 of 2019

SKM(CO)

RLP(11/07/2022)