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Crl.OP.NO.23193 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2022

CORAM:

THE HON'BLE MS.JUSTICE R.N.MANJULA

CRL.O.P.NO.23193 OF 2022

B.Uma ... Petitioner/ Accused

Versus

A.Shanthi ... Respondent/complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to set aside the dismissal order passed by the learned Metropolitan Magistrate FTC-I, Egmore, Allikulam, Chennai, in Crl.MP.No.19660/2022 in CC.No.6573/2019 dated 06.09.2022.

For Petitioner : Mr.G.Ashok Kumar

For Respondent : No appearance

ORDER

This Criminal Original Petition has been filed to set aside the dismissal order passed by the learned Metropolitan Magistrate FTC-I, Egmore, Allikulam, Chennai in Crl.MP.No.19660/2022 in CC.No.6573/2019



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dated 06.09.2022.

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2. The petitioner is the accused against whom the respondent has filed a private complaint for the offence under Section 138 of NI Act. During the pendency of the said case, the petitioner who is an accused has filed the petition to recall for cross examination. The said petition was dismissed. Aggrieved over that this Criminal Original Petition has been filed.

3. The learned Counsel for the petitioner submitted that in the interest of justice an opportunity should be given to the petitioner to cross examine PW-1.

4. The learned counsel for the respondent submitted that despite the complainant was examined on 26/3/2021, cross examination has not been done immediately; the petitioner has filed this petition just to drag the proceedings, hence the petition should be dismissed.

5. It is needless to state that for matters involving dishonor of cheques, there is an initial presumption in favour of the complainant under Section



139 of the Negotiable Instruments Act-1881. PW.1 was examined in chief on 21.12.2021. Since the petitioner was not ready on the said date, the matter has been adjourned to some other date for cross examination. Even thereafter, the petitioner did not cross examine PW1 and he had chosen to file this petition after several months of delay. The petitioner has got the duty to rebut the initial presumption and for which, he should be given with sufficient opportunity. It would have been fine, if the petitioner had made use of the opportunity and filed this petition at an earliest point of time. Though it is right on the part of the learned Judicial Magistrate to observe that the conduct of the petitioner is just to delay the proceedings, without the cross examination of the complainant, no proper appreciation can be done.

6. Considering the delay and also the inconvenience caused to the respondent, I feel that the petition should be allowed on payment of cost to PW.1 and also that PW.1 shall be cross examined on one and the same day. However, it is at the discretion of the learned Metropolitan Magistrate FTC-I, Egmore, Allikulam, Chennai to fix a date for cross-examination of P.W.1.



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R.N.MANJULA, J.

jrs

In the result, the Criminal Original Petition is **allowed** and the order dated 06.09.2022 passed by the learned Metropolitan Magistrate FTC-I, Egmore, Allikulam, Chennai in Crl.MP.No.19660/2022 in CC.No.6573/2019 is hereby set aside with a condition that the petitioner shall cross-examine P.W.1 on the same day, as fixed by the learned Metropolitan Magistrate FTC-I, Egmore, Allikulam, Chennai and to pay a cost of Rs.1,000/- (Rupees One Thousand Only) to the witness on the day when she is present for cross-examination.

22.11.2022

jrs

Internet: Yes /No

Index: Yes /No

Speaking / Non-Speaking

To

1.The Metropolitan Magistrate FTC-I,
Egmore, Allikulam, Chennai.

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