

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.23646 & 23648 of 2018  
& Crl.M.P.Nos.13306 & 13310 of 2018

Shri Venkateshwara Tyres And Co  
Rep by its Proprietor  
P.Senthamil Selvam  
Son of V.Ponniah  
6 Jawaharlal Nehru Road,  
Thirumangalam,  
Chennai - 600 040.

... Petitioner/Respondent  
in both Crl.O.Ps

Vs.

Logaprabhu CVN

... Respondent/Accused  
in both Crl.O.Ps

COMMON PRAYER: The Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records and set aside the order dated 05.03.2018 of the XX Metropolitan Magistrate Court (Allikulam) Ripon Building, Chennai-600 003 in M.P.Nos.182 and 181 of 2018 respectively in C.C.No.5478 of 2016.

For Petitioner  
in both Crl.O.Ps. : Mr.S.Haja Mohideen Gisthi

For Respondent  
in both Crl.O.Ps : Mr.S.Balaji

COMMON ORDER

The Petitioner / complainant filed a private complaint under Section 138 of Negotiable Instruments Act against the respondent/accused. The case is pending trial in C.C.No.5478 of 2016.

2.The contention of the petitioner is that the accused in this case is facing the trial. The chief examination of complainant completed on 05.10.2017, during chief examination marked Ex.P1 to Ex.P11. The respondent/accused failed to cross examine P.W.1 and thereafter evidence closed. The respondent /

accused filed a petition in C.M.P.No.181 of 2018 under Section 311 Cr.P.C. to recall P.W.1. and C.M.P.No.182 of 2018 under Section 91 Cr.P.C. to produce certain documents which are lying with the complainant. Both the petitions were allowed by the trial Court vide separate orders dated 05.03.2018.

3.The primary contention of the petitioner is that the chief examination of the complainant was over as early as on 05.10.2017, the petitioner filed a recall petition after a period of two years, and the petition under Section 91 Cr.P.C. also filed after two years. The petitioner submitted that even before cross examining, the witnesses formulate any defence without any justification filed petitions under Section 91 Cr.P.C. to call for certain documents for the period of 2014 to 2016 viz. Bank statement, income tax assessment and balance sheet. The petitioner and the respondent had business transaction and the cheque is for the period of 2016. For what reasons, the respondent sought the statement of accounts, income tax returns and balance sheet for the year 2014 is not known. The trial Court passed order in favour of the respondent, and failed to look into the fact the witnesses not cross examined, and the respondent not made out a case justifying summon of the documents u/s 91 Cr.P.C and the Petition is a premature one. Further, in the petition u/s 311 Cr.P.C, no reason given why the witness was unable to be cross examined immediately and for what reason after two years the petition belatedly filed. Hence, prayed for setting aside the orders of the trial Court in Crl.O.P.Nos.181 and 182 of 2018 dated 05.03.2018.

4. The learned counsel for the respondent vehemently argued and submitted that the respondent is facing trial under Section 138 of N.I. Act, wherein the statutory presumption is against him. Only by recalling of the witnesses and by cross examination, he can dislodge the statutory presumption to put forth his defence. The evidence of a witness is complete only after cross examination thereby testing the veracity of witness. He further submits that the above documents are necessary to put forth his defence to propablize his case.

5.It is not in dispute in this case that P.W.1 was examined on 05.10.2017 and Ex.P.1 to Ex.P.11 marked. After a delay, petition u/s.311 Cr.P.C and u/s.91 Cr.P.C. filed and allowed. The respondent so far not cross examined P.W.1, the complaint.

6.In view of the same, without cross examination, formulating his defence, in the absence of justifying reason for summoning the documents, filling of petition u/s 91 Cr.P.C would be a premature one. Therefore, this Court set aside the order passed in C.M.P.No.182 of 2018.

7. With regard to the order passed in C.M.P.No.181 of 2018, as regards recalling of P.W.1, in the interest of Justice, the same is confirmed, with the direction that cross examination of P.W.1 cannot be further delayed. The case is pending from the year 2016.

8. Learned counsel for the petitioner / complainant and the respondent / accused fairly submitted that it is the case of the year 2016 and both of them are inclined to conclude trial within stipulated period. Both counsels agreed that before the trial Court, C.C. No. 5478 of 2016 can be listed and taken up on 04.05.2022, on which date P.W.1 would be cross examined without fail and they shall complete the trial of the case within a stipulated period.

9. In view of the same, the following direction is given :

- (1) The Trial Court is directed to list C.C.No.5478 of 2016 on 04.05.2022 and to proceed with the trial.
- (2) The complainant P.W.1 to appear before the trial Court on 04.05.2022 on which date, without giving any reason cross examination of P.W.1 to be done.
- (3) The trial Court to complete the trial and to dispose the C.C.No. 5478 of 2016 within one month from 04.05.2022, ie., on or before **\* 04.06.2022.**

10. With the above direction, these criminal original petitions are disposed of. Consequently, the connected miscellaneous petitioners are closed.

Sd/-

Assistant Registrar(CS IX)  
dated: 04.04.2022

//True Copy//

**\* Corrected as per order of this  
Court dated 19.04.2022 made in  
Crl.O.P.Nos.23646 & 23648 of 2018**

Sd/-

**Assistant Registrar (CS-IX)  
dated : 25.04.2022**

Sub Assistant Registrar

kas / dk

To

1. The XX Metropolitan Magistrate  
Court (Allikulam),  
Ripon Building,  
Chennai-600 003.
2. Do- Thro The Chief Metropolitan  
Magistrate, Egmore, Chennai-8.

**\* To be substituted  
to the order already  
despatched on 06.04.2022**

+2cc to Mr.S.Balaji, Advocate Sr.22105 and 22106

+1cc to Mr.S.Haja Mohideen Gisthi, Advocate Sr.22171

Crl.O.P.Nos.23646&23648/2018  
& Crl.M.P.Nos.13306&13310/2018

srg 04/04/2022  
MG(22/04/2022)  
SU(28/04/2022)