



Crl.O.P.(MD) No.2778 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.06.2022

Delivered on : 13.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.O.P.(MD) No.2778 of 2020

and

Crl.M.P(MD)No.1443 of 2020

Sumila

...Petitioner

Vs.

C.Krishnakumar

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records pertaining to the order passed in C.M.P.No. 1659 of 2019 in S.T.C.No.2 of 2017 dated 18.12.2019 on the file of the Judicial Magistrate Fast Track Court (Magistrate Level) Nagercoil.

For Petitioners : Mr.S.Sankar
For Respondent : Mr.R.Murugan



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ORDER

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Challenging the impugned order passed in C.M.P.No.1659 of 2019 in S.T.C.No.2 of 2017 dated 18.12.2019 by the Judicial Magistrate Fast Track Court (Magistrate Level) Nagercoil, the present petition is filed.

2. Fact:- The respondent filed a complaint against the petitioner under Section 138 of Negotiable Instruments Act based on the alleged cheque issued by the petitioner dated 23.08.2016 for a sum of Rs. 7,00,000/- in favour of the complainant, which was dishonoured. The complainant/P.W.1 was examined on 06.02.2019, but he was not cross examined. For want of cross examination, the petitioner filed the petition under Section 311 Cr.P.C to recall P.W.1 for cross examination, which was dismissed by the learned Judicial Magistrate by the impugned order. Aggrieved by the same, the present petition is filed.

3.The learned counsel appearing for the petitioner submitted that the dismissal of the petition filed under Section 311 Cr.P.C is illegal and fair opportunity has to be given to the petitioner/accused to cross



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examine the complainant/P.W.1. Since there was talk of compromise, the petitioner has not cross examined the complainant. The respondent filed the complainant only to harass the petitioner. Hence, the complainant has to be necessarily cross examined.

4. The learned counsel for the respondent objected the petition on the ground that sufficient opportunity has already been granted to the accused.

5.I have considered the matter in the light of the submissions of the both the learned counsels.

6.A perusal of the records would show that the petitioner is an accused in STC No.2 of 2017 on the file of the Judicial Magistrate Fast Track Court (Magistrate Level), Nagercoil. The respondent/complainant filed the complaint alleging that on 23.05.2016, the petitioner/accused received a sum of Rs.7,00,000/- from him for her family expenses and for repayment of the debt amount, she gave a cheque dated 23.08.2016 of



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Indian Bank, Colechel Branch for a sum of Rs.7,00,000/-. When the said cheque was presented before the bank for collection, it was returned as “insufficient fund”. Hence, he filed the complaint.

7. The learned Judicial Magistrate, after taking cognizance of the complaint, conducted trial and the case is posted on 06.02.2019 for cross examination of P.W.1. On the said date, the petitioner/accused has not cross-examined the complainant/P.W.1. Therefore, the petitioner/accused filed the petition in Cr.M.P.No.2276 of 2018 to recall the witness/complainant for cross-examination and the same was allowed with cost of Rs.500/-, but the petitioner has not settled the case as stated. The case was adjourned several times from 07.12.2018 to 06.02.2019. Since the petitioner has not ready to cross examine the complainant, after closing the complainant's side evidence, the case was posted for defence's side evidence to 06.12.2019. Thereafter, the petitioner filed this petition second time. The Trial Court, after considering both sides submissions, dismissed the said petition by observing that there was no acceptable reason for recalling the witness for cross examination of P.W.



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1. Further, perusal of the impugned order clearly reveals the absence of *bone fide* on the part of the petitioner. Though many chances have been given to the petitioner for cross examination of P.W.1, she failed to avail that opportunities. I find no infirmity or irregularity in the order passed by the trial court.

8. Hence, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is also dismissed.

13.07.2022

Internet:Yes
Index:Yes/No
Speaking/Non speaking order
skn

To

- 1.The Judicial Magistrate -
Fast Track Court (Magistrate Level)
Nagercoil.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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V.SIVAGNANAM, J.

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