



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**Reserved on : 14.12.2021**

**Delivered on : 09.02.2022**

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**CORAM:**

**THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR**

**Crl.O.P. (MD)No.19344 of 2019**

**and**

**Crl.M.P. (MD)No.11345 of 2019**

P.Ramesh

... Petitioner/Respondent/Complainant

vs.

R.Umarani

... Respondent/Petitioner/Accused

**PRAYER :** Criminal Original Petition filed under Section 482 Cr.P.C, to set aside the order passed in Cr.M.P.No.792 of 2019 in C.C.No.5 of 2018 on the file of the Judicial Magistrate, Fast Track Court (ML), Uthamapalayam, dated 09.10.2019 and allow the above criminal original petition.

For Petitioner : Mr.K.Guhan

For Respondent : Mr.R.M.Arun Swaminathan

**O R D E R**

This Criminal Original Petition is directed against the order passed in Cr.M.P..No.792 of 2019 in C.C.No.5 of 2018 dated 09.10.2019 on the file of the Judicial Magistrate, Fast Track Court (ML), Uthamapalayam, in allowing the petition filed under Section 311 Cr.P.C.

2.The petitioner is the complainant and he has filed a private complaint under Section 200 Cr.P.C. against the respondent/accused for the offences under Sections 138 r/w 142 of Negotiable Instruments Act.

3.The case of the complainant is that the respondent has borrowed a sum of Rs.2,00,000/- on 22.10.2017 to meet out his family and urgent expenses from the petitioner and agreed to repay the same within a month, that the respondent has issued a cheque dated 21.11.2017 towards discharge of the said liability, that when the cheque was represented for collection, the same was returned with reason "Refer to Drawer", that the petitioner has sent a legal notice dated 20.01.2018 to the respondent demanding to pay the amount covered by the cheque, that the respondent has refused to receive the notice and that since the respondent has neither chosen to send any reply nor he made any payment, the petitioner was constrained to lodge the complaint.



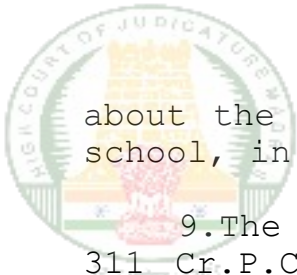
4.It is not in dispute that when the trial was at the fag end, the respondent has filed the above petition under Section 311 Cr.P.C. seeking orders to recall the witnesses P.W.1 and D.W.3 for further examination. The petitioner has filed a counter statement raising serious objections for recall of the witnesses. The learned Judicial Magistrate, after enquiry, has passed the impugned order dated 09.10.2019 allowing the petition and permitted to recall the witnesses P.W.1 and D.W.3 on payment of cost of Rs.500/- to each of the witnesses. Aggrieved by the said order, the complainant has come forward with the above original petition invoking Section 482 Cr.P.C.

5.It is not in dispute that the complainant has already examined his side witnesses and closed his side evidence and that thereafter, the respondent has examined three witnesses as D.W.1 to D.W.3. The respondent, in the petition filed under Section 311 Cr.P.C., has alleged that since his Senior Counsel was not in the station and the important documents were not available, witnesses could not be cross-examined effectively, that since the complainant is working as a teacher in Chinnamanur Gurukkal School, the Headmaster of that school has to be summoned and examined and that the genuineness of the case can be ascertained only by examining the witnesses above referred or else, the respondent will be put to loss and hardship.

6.It is also not in dispute that the complainant was cross-examined elaborately on 24.09.2019 by the defence counsel, that D.W.3 was examined on 10.01.2019 by the respondent's side and subsequently, he was cross-examined by the complainant's side.

7.It is the specific case of the petitioner that originally the respondent has filed a petition under Section 311 Cr.P.C. seeking permission to examine D.W.3 in Cr.M.P.No.138 of 2019 and the same was dismissed by the trial Court, that the respondent has approached this Court challenging the dismissal of the said petition and obtained orders and that thereafter, the said witness D.W.3 was examined in chief on 10.01.2019. The respondent has not disputed the above factual aspects.

8.Admittedly, the above case is pending from 2018 onwards for the past more than three years. The respondent has not canvassed any specific reason for recalling of P.W.1 and D.W.3 for further examination. Though the respondent has alleged that they were not having important documents at the time of the cross-examination of the witnesses, they have not elaborated anything further. Further, the respondent has not furnished the particulars of the documents that they were not available at that time of the earlier cross-examination and also as to how and when the documents came into their possession and as to how those documents are relevant to the case. Moreover, the respondent has not averred anything



about the purpose of summoning and examining the Headmaster of the school, in which, the petitioner is working.

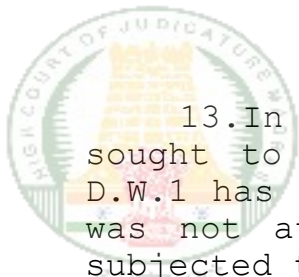
9.The position of law is well settled the power under Section 311 Cr.P.C. cannot be utilized for filing the application at any stage and that though the power is widest, the same should be exercised judicially or not arbitrarily.

10.The Hon'ble Supreme Court in ***Selvi J.Jayalalitha vs. State by Deputy Superintendent of Police, Chennai*** reported in **2000 MLJ (Cr1.) 762** has expressed their agreement with the view taken by the High Court that when the trial Court is not inclined to exercise the discretion under Section 311 of the Code for recall of the witnesses required by the appellant, there is no warrant for interference with that discretion.

11.The Hon'ble Supreme Court in ***Ratanlal vs. Prahlad Jat and others (Criminal Appeal No.499 of 2014)*** while considering the power under Section 311 Cr.P.C. has held as follows:-

"17. In order to enable the court to find out the truth and render a just decision, the salutary provisions of Section 311 are enacted whereunder any court by exercising its discretionary authority at any stage of inquiry, trial or other proceeding can summon any person as witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person already examined who are expected to be able to throw light upon the matter in dispute. The object of the provision as a whole is to do justice not only from the point of view of the accused and the prosecution but also from the point of view of an orderly society. This power is to be exercised only for strong and valid reasons and it should be exercised with caution and circumspection. Recall is not a matter of course and the discretion given to the court has to be exercised judicially to prevent failure of justice. Therefore, the reasons for exercising this power should be spelt out in the order."

12.The learned counsel for the petitioner has relied on a judgment of Rajasthan High Court in the case of ***Ashok Kumar vs. State of Rajasthan and another*** reported in **1995 CriLJ 1231** wherein, application under Section 311 Cr.P.C. to recall the two witnesses was rejected by the Magistrate on the ground that though the sufficient opportunity to cross-examine was given to the petitioner, he did not avail the same and when the same was challenged, since the witnesses were not at all cross-examined, directed the petitioner to avail the opportunity to cross-examine the witnesses on payment of costs.



13.In the case on hand, as already pointed out, the witnesses sought to be recalled, P.W.1 has already been cross-examined and D.W.1 has already been examined and it is not their case that P.W.1 was not at all subjected to cross-examination and D.W.3 was not subjected to further examination.

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14.As rightly contended by the learned counsel for the petitioner, when the case is at the final stage of the trial, the above petition under Section 311 Cr.P.C. came to be filed only to drag on the proceedings. The respondent has not shown any valid reasons or grounds to recall the witnesses P.W.1 and D.W.3 and for summoning the new witness, i.e., Headmaster of Chinnamanur Gurukkal School, but the learned Magistrate, without considering the above aspects in proper perspective, has allowed the petition in a casual and mechanical fashion by simply imposing a cost of Rs.500/- to be payable to the witnesses.

15.Considering the above, this Court has no hesitation to hold that the impugned order allowing the petition filed under Section 311 Cr.P.C. is not good in law and the same is liable to be set aside.

16.Considering the fact that the case is pending from 2018 onwards, this Court is of view that necessary direction is to be issued to the trial Court for earlier disposal of the case.

17.In the result, this Criminal Original Petition is allowed and the impugned order dated 09.10.2019 is set aside. Consequently, connected miscellaneous petition is closed. The petition in Cr.M.P.No.792 of 2019 is dismissed. The learned Judicial Magistrate is directed to complete the trial and dispose of the case as expeditiously as possible preferably, within two months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

CSM

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



**TO:**

The Judicial Magistrate,  
Fast Track Court (ML),  
Uthamapalayam,  
Theni District.

**order made in**  
**Crl.O.P. (MD) No.19344 of 2019**  
**and**  
**Crl.M.P. (MD) No.11345 of 2019**  
**09.02.2022**

**AM** (CO)  
GC (23.02.2022) 5P 2C