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Crl.O.P.Nos.1094, 1095, 1098 & 1100 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2023

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.Nos.1094, 1095, 1098 & 1100 of 2023

and

Crl.M.P.Nos.571, 573, 575 & 577 of 2023

M/s.Sree Padma Baalaji Industries
represented by its Proprietrix
V.Sujatha W/o.Venugopal
No.28, 68-D, Park Street,
Coimbatore.

Also at

No.28, Amirtha Avenue,
Nallampalayam, Coimbatore

... Petitioner in all Crl.O.Ps.

Vs.

M/s.Unitech Enterprises,
represented by its Partner,
K.Dhanapalan S/o.Krishnan
Gajjalanaickenpatti Village,
Kandili Post,

Tirupathur Taluk, Vellore District. ... Respondent in all Crl.O.Ps.

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C.
praying to call for the records pertaining to the order dated 07.12.2022
passed by Judicial Magistrate I, Krishnagiri, in Crl.M.P.No.10028 of
2022 in S.T.C.No.1265 of 2015, Crl.M.P.No.10037 of 2022 in
S.T.C.No.795 of 2016, Crl.M.P.No.10041 of 2022 in S.T.C.No.793 of



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2016 and Crl.M.P.No.10023 of 2022 in S.T.C.No.1185 of 2015 and set aside the same and consequently, allow the petitioner to cross-examine PW-1.

For Petitioner : Mr.R.Divyapreathika
[in all Crl.O.Ps.]

For Respondent : No appearance
[in all Crl.O.Ps.]

COMMON ORDER

These Criminal Original Petitions have been filed challenging the orders passed by the Court below dismissing the petitions filed in four complaints u/s.311 Cr.P.C. to recall PW-1 for cross-examination.

2. The respondent had filed four complaints against the petitioner for offence u/s.138 of the Negotiable Instruments Act. The cases were at the stage of final arguments and at that stage on 02.11.2022, petitions came to be filed u/s.311 Cr.P.C. to recall PW-1 for cross-examination. The petitions were dismissed by the Court below mainly on the ground that such petitions were filed after nearly 5½ years after PW-1 was examined in the year 2017. Aggrieved by the same, these Criminal Original Petitions have been filed before this Court.



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3. Heard Mr.R.Divyapreathika, learned counsel for petitioner and carefully perused the materials available on record. Though notice has been served on the respondent and the name has also been printed in the cause list, there is no representation on the side of the respondent.

4. PW-1 was examined on 23.01.2017 and he was not cross-examined on the side of the petitioner/accused. After nearly 5½ years, the petitions were filed u/s.311 Cr.P.C. to recall PW-1 for cross-examination. The Court below took into consideration the enormous delay in filing the petitions and accordingly, dismissed the petitions.

5. Taking into consideration the facts and circumstances of the case and in order to afford an one last opportunity to the petitioner to cross-examine PW-1 since the petitioner has to rebut the presumption u/s.139 of the Negotiable Instruments Act, this Court is inclined to interfere with the orders passed by the Court by imposing conditions.

6. The legislature brought in Section 143-A of the Negotiable Instruments Act to deal with a situation like the present one. This provision enables the trial Court to use its discretion and direct payment



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of interim compensation by the accused person in appropriate cases.

Section 143-A (2) of the Negotiable Instruments Act fixes the maximum compensation as 20% of the cheque amount. Where there is an enormous delay on the part of the accused in filing applications to recall any witness and such an attempt is made at the fag end of the case, Section 143-A can be resorted to and the accused person can be made to deposit interim compensation. By doing so, the rights of the both sides can be properly balanced.

7. In the light of the above discussion, the orders passed by the Court below in Crl.M.P.No.10028 of 2022 in S.T.C.No.1265 of 2015, Crl.M.P.No.10037 of 2022 in S.T.C.No.795 of 2016, Crl.M.P.No.10041 of 2022 in S.T.C.No.793 of 2016 and Crl.M.P.No.10023 of 2022 in S.T.C.No.1185 of 2015, dated 07.12.2022, are hereby set aside.

8. The petitioner is directed to deposit a sum of Rs.1,50,000/- [Rupees One Lakh and Fifty Thousand only] to the credit of S.T.C.No.1265 of 2015 on the file of Judicial Magistrate I, Krishnagiri, on or before 11.09.2023. On such deposit, the Court below shall fix a date for the appearance of PW-1. The petitioner shall cross-examine PW-



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1 on the same day in all the complaints. If the petitioner fails to cross-examine PW-1 on the date of appearance, the petitioner will loose their right to once again recall PW-1 in future.

Accordingly, these Criminal Original Petitions are allowed. There shall be a direction to the Court below to complete the proceedings within a period of three (3) months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

22.08.2023

Speaking Order/Non-speaking Order

Index : Yes/No

Neutral citation: Yes/No

gm

To

The Judicial Magistrate I,
Krishnagiri.

N.ANAND VENKATESH, J



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