



CrI.O.P.No.4562 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

**CrI.O.P.No.4562 of 2023 and
CrI.M.P.No.2882 of 2023**

1. Sri Avina Paper and Boards Private Limited,
SF.No.469/2, Mundalaimadaiyankadu,
Pallakkapalalyam, Thiruchendgode,
Namakkal.
2. Muthukumaran Ramasamy,
Director of Sri Avina Paper and Boards
Private Limited,
SF.No.469/2, Mundalaimadaiyankadu,
Pallakkapalalyam, Thiruchendgoe,
Namakkal.
3. Natarajan Tamilselvi,
Director of Sri Avina Paper and Boards Private Limited,
SF.No.469/2, Mundalaimadaiyankadu,
Pallakkapalalyam, Thiruchendgode,
Namakkal.
4. Vella Gounder Vellaiyan,
Director of Sri Avina Paper and Boards Private Limited,
SF.No.469/2, Mudalaimadaiyankadu,
Pallakkapalalyam, Thiruchendgode,
Namakkal.



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5. Sri Rajagounder Lakshmi,
Director of Sri Avina Paper and Boards
Private Limited,
SF.No.469/2, Mudalaimadaiyankadu,
Pallakkapalalyam, Thiruchendgode,
Namakkal.

... Petitioners

Vs.

V.C.R.Finance,
Represented by V.C.Ravichandran,
S/o.Chinniah,
40A, Kamarajar Nagar,
Chinnathirupathi,
Salem - 8.

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, 1973, praying to set aside the order dated 07.01.2023 made in Crl.M.P.No.4086 of 2022 in S.T.C.No.195 of 2014 pending on the file of the learned Judicial Magistrate No.IV, Salem.

For Petitioners : Mr.B.Kumarasamy

For Respondent : Mr.P.Jagadeesan

ORDER

This petition has been filed challenging the order of the Court below allowing the application filed in C.M.P.No.4086 of 2022 under Section 311 of Cr.P.C to recall PW1 for marking certain documents.



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2. The respondent filed a complaint against the petitioners for the offence under Section 138 of Negotiable Instruments Act, 1881. The case was at the stage of defence evidence. At that stage, the respondent filed an application under Section 311 of Cr.P.C to recall PW1 for marking some documents. This application came to be dismissed by the Court below by an order dated 07.01.2023. Aggrieved by the same, the present petition has been filed before this Court.

3. Heard Mr.B.Kumarasamy, learned counsel for the petitioners and Mr.P.Jagadeesan, learned counsel for the respondent.

4. The main ground on which the petition was filed by the respondent to recall PW1 for marking some documents is that they wanted to establish that A3 to A6 are also involved in the day-to-day affairs of the Company and they are also liable for the offence under Section 138 of Negotiable Instruments Act. According to the respondent, A2 was examined



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as DW1 on the side of the defence and unfortunately, he died and hence, the respondent was not able to elicit any answer on the role played by A3-A6 in the Company. In view of the same, the respondent wanted to recall himself and mark certain documents to establish that A3 to A6 are also involved in the day-to-day affairs of the Company.

5. The petitioners had objected to the application mainly on the ground that the complaint was being dragged from time to time and it has been pending from 2014 onwards. That apart, there was already a direction issued by this Court in the year 2019 to complete the proceedings within a period of three months. In spite of the same, the respondent is dragging on with the complaint. That apart, the petitioners have also raised the ground that the respondent is trying to fill up the *lacuna* and hence, the petition is liable to be dismissed.

6. The Court below, on considering the rival submissions, came to a conclusion that DW1(A2) took a specific stand that he alone was



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responsible for all the activities of A1-Company and the other accused persons did not have any role to play in the Company. Unfortunately, DW1(A2) died and he was not able to be cross-examined on the side of the respondent. In view of the same, the respondent had to necessarily prove through some evidence that A3 to A6 also have a role to play in the A1-Company. For that purpose, the respondent has relied upon certain documents and he wanted to mark the same by recalling himself (PW1). The Court below wanted to give one opportunity to the respondent to recall himself and mark the documents.

7. The reason assigned by the Court below does not suffer from any illegality or infirmity and does not warrant any interference of this Court. That apart, the petitioners will also have an opportunity to cross-examine PW1 on the documents that are sought to be marked by recalling PW1 and therefore, they will not be put to any prejudice.



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8. However, this Court takes into consideration the fact that the complaint has been pending for the last nine years and hence, the proceedings must be concluded within a short time.

9. In the result, the order passed by the Court below is upheld and this Criminal Original Petition is disposed of with a direction to the learned Judicial Magistrate No.IV, Salem to dispose of S.T.C.No.195 of 2014 within a period of two months from the date of receipt of a copy of this order and to file a compliance report before this Court. Consequently, connected Miscellaneous Petition is closed.

14.09.2023

NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

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To

The learned Judicial Magistrate No.IV,
Salem.



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vji / apd

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