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Crl.O.P.No.7803 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2023

CORAM :

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

**Crl.O.P.No.7803 of 2023
and Crl.M.P.No.5007 of 2023**

Abirama Krishnamurthy

.. Petitioner

Versus

M/s.Hosur Hand Made Soaps Pvt. Ltd

Having office at 3 / 248-2

Vathiripalli Village

Thummanapalli Post,

Hosur Taluk,

Pincode - 635105

Represented by its director

K.Harish Babu

.. Respondent

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to direct the learned Judicial Magistrate (Fast Track Court, Hosur) to recall defense side witnesses as ordered in Crl.M.P.No.4831 of 2022 in S.T.C.No.29 of 2021 by its order, dated 05.01.2023.

For Petitioner : Mr.J.Prakasam

For Respondent : No Appearance

ORDER



Crl.O.P.No.7803 of 2023

WEB COPY

This petition has been filed challenging the order passed by the Court below in Crl.M.P.No.4831 of 2022 in S.T.C.No.29 of 2021, dated 05.01.2023 dismissing the application filed under Section 311 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.,') to recall and examine the witness on the side of the defence.

2. Heard Mr.J.Prakasam, learned Counsel for the petitioner. The respondent has been served with the private notice and there is no appearance either in person or through Counsel.

3. The petitioner who has been arrayed as accused No.2 is facing trial before the Court below for offence under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'N.I.Act') instituted by the respondent in S.T.C.No.29 of 2021.

4. The case was at the stage of examining witnesses on the side of the defence. The Court below closed the defence side evidence on 24.11.2022 and posted the case for arguments on 16.12.2022. The petitioner filed an application under Section 311 of Cr.P.C., to recall the defence side witness



Crl.O.P.No.7803 of 2023

WEB COPY

in Crl.M.P.No.4831 of 2022. This application was allowed by the Court below by an order, dated 05.01.2023 by imposing a condition to the petitioner to pay a cost of Rs.2,000/- on or before 19.01.2023 to the respondent / complainant. The petitioner attempted to pay the cost and according to the petitioner, the respondent / complainant evaded the receipt of the cost and the Counsel also refused to receive the cost. Since there were Court Holidays from 13.01.2023 to 18.01.2023 due to Pongal Festival, the matter was listed on 19.01.2023 and even on that day, the respondent / complainant refused to receive the cost. Even though this was brought to the notice of the Court below, the Court below recorded that the cost has not been paid and accordingly closed the application and posted the case for arguments on 09.02.2023. Aggrieved by the same, the present petition has been filed before this Court.

5. In the considered view of this Court, the petitioner wanted to examine himself in order to rebut the presumption under Section 139 of the N.I.Act. The reason for not paying the cost on or before 19.01.2023 has been properly explained by the petitioner and the Court below ought to have given a chance to the petitioner by extending the time. The learned Counsel



Crl.O.P.No.7803 of 2023

WEB COPY

for the petitioner submitted that the cost was not able to be paid since the respondent / complainant was refusing to receive it and there were intervening Pongal Holidays. In view of the same, this Court is inclined to give one last chance to the petitioner.

6. In the light of the above discussion, the order passed by the Court below, dated 19.01.2023 is hereby set aside. The petitioner is directed to deposit cost of a sum of Rs.3,000/- before the Court below in S.T.C.No.29 of 2021 on or before 21.07.2023. On such deposit, the Court below shall fix a date for the examination of the petitioner as defence side witness and the cross-examination shall also be completed on the same day. Thereafter, the Court below shall fix a date for final arguments.

7. In the result, this Criminal Original Petition is allowed in the above terms and there shall be a direction to the Court below to complete the proceedings in S.T.C.No.29 of 2021 within a period of six weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.



Crl.O.P.No.7803 of 2023

17.07.2023

WEB COPY

Index : yes/no

Speaking order/Non-speaking order

Neutral Citation : yes/no

grs

Note : Issue order copy on 18.07.2023.



Crl.O.P.No.7803 of 2023

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The Judicial Magistrate
Fast Track Court, Hosur.



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Crl.O.P.No.7803 of 2023

N.ANAND VENKATESH, J.

grs

Crl.O.P.No.7803 of 2023
and Crl.M.P.No.5007 of 2023

17.07.2023