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Crl.O.P.Nos.4560, 4561 and 4568 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.Nos.4560, 4561 and 4568 of 2023

Sethurajan

... Petitioner in all Crl.O.Ps

Vs.

Manickavasagam

... Respondent in all Crl.O.Ps

COMMON PRAYER : Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, 1973 praying to set aside the order dated 23.01.2023 made in Crl.M.P.No.7305 of 2022 in S.T.C.No.84 of 2022, Crl.M.P.No.7303 of 2022 in S.T.C.No.86 of 2022 and Crl.M.P.No.7304 of 2022 in S.T.C.No.85 of 2022 respectively on the file of the learned Judicial Magistrate-I, Namakkal.

For Petitioner
in all Crl.O.Ps : Mr.J.Jayan

For Respondent
in all Crl.O.Ps : Mr.M.Guruprasad



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COMMON ORDER

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Since the issues involved in all these Criminal Original Petitions are common, they are taken up together, heard and disposed of through this common order.

2. The respondent filed three complaints against the petitioner for the offence under Section 138 of the Negotiable Instruments Act, 1881. The case was at the stage of defence side evidence and at that stage, the applications came to be filed in all the three cases by the petitioner under Section 311 of Cr.P.C to recall PW1 for cross-examination. All the three applications came to be dismissed by the Court below by an order dated 23.01.2023. Aggrieved by the same, these petitions have been filed before this Court.

3. Heard Mr.J.Jayan, learned counsel for the petitioner and Mr.M.Guruprasad, learned counsel for the respondent.



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4. The respondent was examined as PW1 on 03.09.2022. He was not cross-examined on the side of the petitioner. Thereafter, the petitioner was questioned under Section 313 of Cr.P.C and the matter was at the stage of defence side evidence. At that stage, the applications came to be filed for recalling PW1 for cross-examination.

5. On a careful reading of the order passed by the Court below, it is seen that the petitioner had earlier filed an application for recalling PW1 for cross-examination. The said application was also allowed by an order dated 31.10.2022. However, the petitioner failed to cross-examine PW1. Hence, the evidence was closed on 26.12.2022. Once again, the petitioner filed an application under Section 311 of Cr.P.C to recall PW1 for cross-examination and the same was dismissed by the Court below on the ground that the petitioner had sufficient opportunity to cross-examine PW1 and in spite of the same, the petitioner failed to cross-examine and therefore, there is no ground to recall PW1.



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6. The petitioner is facing trial for the offence under Section 138 of the Negotiable Instruments Act, 1881. Section 139 of the Negotiable Instruments Act brings in the concept of reverse burden and hence, the burden is upon the petitioner to rebut the legal presumption. Hence, one last opportunity can be given to the petitioner to recall PW1 for cross-examination. Such an opportunity can be given by putting the petitioner on terms.

7. In the light of the above discussion, the order passed by the Court below in Crl.M.P Nos.7303, 7304 and 7305 of 2022 in S.T.C.Nos.84, 85 and 86 of 2022 dated 23.01.2023 is hereby set aside.

8. It is brought to the notice of this Court that all the three cases were posted for hearing today. The petitioner is directed to deposit a sum of Rs.6,00,000/- (Rupees Six Lakhs only) in each case to the account of S.T.C.Nos.84, 85 and 86 of 2022 within a period of four weeks from the date of receipt of a copy of this order.



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9. The Court below shall ensure the deposit of amount and thereafter, shall fix a date for appearance of PW1. On the date of appearance, the petitioner shall cross-examine PW1 in all the three cases and the cross-examination shall be completed on the same day. If for any reason, the petitioner fails to cross-examine PW1 on the date of his appearance, the petitioner will lose his right to recall PW1 in future.

10. In the result, all these Criminal Original Petitions are allowed in the above terms and there shall be a direction to the Court below to complete the proceedings in S.T.C.Nos.84, 85 and 86 of 2022 within a period of four months thereafter.

14.09.2023

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

vji / apd

To

The learned Judicial Magistrate – I,
Namakkal.



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N.ANAND VENKATESH, J.

vji / apd

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