



CrI.O.P.No.13650 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.No.13650 of 2023

and

CrI.M.P.No.8544 of 2023

P.Elangovan

.. Petitioner

Vs.

A.K.Ganesan

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed in CMP.No.4361 of 2023 dated 24.05.2023 in C.C.No.655 of 2021 on the file of Learned Judicial Magistrate, Additional Mahila Court, Namakkal.

For Petitioner : Mr.S.Suresh

For Respondent : Mr.C.Iyyapparaj



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ORDER

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This petition has been filed, challenging the order passed by the Court below in C.M.P.No.4361 of 2023 dated 24.05.2023, dismissing the application filed in C.M.P.No.4361 of 2023 in C.C.No.655 of 2021 by order dated 24.05.2023 under Section 311 of Cr.P.C. to recall P.W.2 for cross-examination.

2. Heard Mr.S.Suresh, learned counsel for the petitioner and Mr.C.Iyyapparaj, learned counsel for the respondent.

3. The respondent/complainant has filed a complaint against the petitioner under Section 138 of the Negotiable Instrument Act. The complainant was examined as P.W.1. The Bank Manager was examined as P.W.2. When the Bank Manager was examined as P.W.2 on 09.05.2023, the petitioner/accused did not cross-examine P.W.2 and hence, the evidence on the side of the complainant was closed and the matter was posted for questioning under Section 313 of Cr.P.C. At this stage, the petitioner filed an application under Section 311 of Cr.P.C to recall P.W.2 for cross-examination. The Court below has dismissed this application and aggrieved



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by the same, the present Criminal Original Petition has been filed before this

WEB COURT.

4. Taking into consideration the facts and circumstances of the case and in order to afford one last opportunity to the petitioner to cross-examine P.W.2, this Court is inclined to interfere with the order passed by the Court below. Accordingly, the order passed in C.M.P.No.4361 of 2023 in C.C.No.655 of 2021 dated 24.05.2023 is hereby set aside.

5. This Criminal Original Petition is allowed with the following directions:

a) The petitioner shall deposit a cost of Rs.3,000/- (Rupees Three Thousand only) before the Court below when the matter comes up for hearing on 10.08.2023.

b) The petitioner on complying with the direction issued in Clause(a), the Court below shall issue summons to P.W.2 for appearance on the next date of hearing and on the date of the appearance of P.W.2, the cross-examination must be completed on the side of the petitioner. The cost shall



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also be paid to P.W.2.

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c) If P.W.2 is not cross-examined on the date of his appearance, the petitioner will loose his right to recall P.W.2 thereafter and the Court below is directed to dispose of C.C.No.655 of 2021 within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

04.08.2023

Speaking order:Yes/No
Neutral citation:Yes/No
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Note: Registry is directed to issue order copy on 08.08.2023.

To

1. The Learned Judicial Magistrate,
Additional Mahila Court,
Namakkal.
2. The Public Prosecutor
High Court of Madras,
Madras.



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N.ANAND VENKATESH, J

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