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Crl.O.P.No.25518 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.11.2023

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.25518 of 2023

and

Crl.M.P.No.17707 of 2023

R.Ravichandran

... Petitioner

Vs

Thangaraj

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleaded to call for the records pertaining the order passed in Crl.M.P.No.5604/2022 in C.C.No.98 of 2017 on the file of the learned Judicial Magistrate No.II, Gobichettipalayam and to set aside the order of dismissing claim of the petitioner.

For Petitioner : Ms.V.Geetharani

ORDER

The private complaint in C.C.No.98 of 2017 is arising under Section 138 of N.I.Act. The petitioner herein is the accused in that case. After examination of PW.1 when the matter proceeded further, this petitioner has filed an application under Section 311 Cr.P.C., to recall PW.1.

2. The trial Court on considering the nature of the case allowed the



application filed under Section 311 Cr.P.C., on 14.07.2022 with a specific condition that he should deposit Rs.3,000/- on or before 11.08.2022 and on that day, he should cross examine PW.1 and subsequently on dates whenever the matter is adjourned for cross examination of PW.1. Though the petitioner paid the cost had not cross examined PW.1, in spite of adjourning the matter from 11.08.2022 to 24.08.2022, 06.10.2022, 15.10.2022, 02.11.2022 and 11.11.2022. In such circumstances, the trial Court has felt that the absence of the accused without cross examining PW.1 in spite of several adjournments renders him to loose the opportunity granted under Section 311 Cr.P.C.

3. The trial Court has also observed that the examination of prosecution witnesses is over as early as on 17.03.2023 and the matter was listed for questioning on 18.11.2022 under Section 313 Cr.P.C. Thereafter, the case is pending for long time and the petition under Section 311 Cr.P.C., was allowed. Even after, entertaining Section 311 Cr.P.C petition., the accused has not availed to cross examine PW.1 even after adjournment of four hearings



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4. The reason stated by the trial Court is appropriate and in tune with the spirit of the Section 311 Cr.P.C, this Court finds no error or illegality in the order. The petitioner though been given opportunity to cross examine PW.1 by allowing the recall petition, it has not been availed by him despite enough opportunity was granted. Hence this Criminal Original Petition is dismissed. Consequently, the connected Criminal Miscellaneous Petition is also dismissed.

09.11.2023

Index : Yes/No

Neutral Citation : Yes/No

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To

The Judicial Magistrate No.II, Gobichettipalayam



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Dr.G.JAYACHANDRAN, J.

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