



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.Nos.16390, 16399, 16395 and 16402 of 2023
and Crl.M.P.Nos.10448, 10459, 10457 & 10461 of 2023

B.Prakash Kumar

... Petitioner for
all Crl.O.Ps

Vs.

M.Arumugham

...Respondent for
all Crl.O.Ps

PRAYER in Crl.O.P.No.16390 of 2023: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed in C.M.P.No.4181 of 2018 in STC No.57 of 2016 dated 22.06.2023 on the file of the Learned Judicial Magistrate No.II, Kancheepuram.

PRAYER in Crl.O.P.No.16399 of 2023: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed in C.M.P.No.4182 of 2018 in STC No.55 of 2016 dated 22.06.2023 on the file of the Learned Judicial Magistrate No.II, Kancheepuram.

PRAYER in Crl.O.P.No.16395 of 2023: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed in C.M.P.No.4178



of 2018 in STC No.56 of 2016 dated 22.06.2023 on the file of the Learned Judicial Magistrate No.II, Kancheepuram.

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PRAYER in CrI.O.P.No.16402 of 2023: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed in C.M.P.No.4175 of 2018 in STC No.54 of 2016 dated 22.06.2023 on the file of the Learned Judicial Magistrate No.II, Kancheepuram.

For Petitioner : Mr.K.Sivakumar
in all CrI.O.Ps

For Respondents : Mr.J.R.K.Bhavanantham
in all CrI.O.Ps

ORDER

All these criminal original petitions have been filed challenging the order passed by the Court below dismissing the application filed under Section 311 of Cr.P.C., to recall PW1 for further cross-examination.

2.Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the respondent.

3.The respondent in all these petitions filed a complaint against the petitioner for offence under Section 138 of the Negotiable Instruments Act. These complaints are



pending from the year 2016 onwards. PW1 was cross-examined on the side of the petitioner on 01.06.2018. Since the petitioner was not able to put all the questions to PW1 during cross-examination, an application under Section 311 of Cr.P.C., was filed immediately thereafter to recall PW1 for further cross-examination. Unfortunately, these applications came to be disposed of by the Court below only by an order dated 22.06.2023 by dismissing the applications.

4.In view of the above, this Court called for the report from the learned Judicial Magistrate-II, Kancheepuram as to why the applications which were filed in the year 2018 came to be disposed of only in the year 2023. Accordingly, a report dated 04.08.2023 was sent by the learned Judicial Magistrate by giving the reasons. This Court was convinced with the reasons given by the learned Judicial Magistrate and the same was recorded in the order passed on 18.08.2023.

5.In the instant case, all the complaints are now at the stage of defense evidence. The petitioner in each complaint has to rebut the presumption under Section 139 of the Negotiable Instruments Act and hence, this Court is inclined to grant one opportunity to the petitioner to recall PW1 for further cross-examination by imposing certain conditions.



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6. In the light of the above discussion, the order passed by the Court below in C.M.P.No.4175 of 2018 in STC No.54 of 2016, C.M.P.No.4182 of 2018 in STC No.55 of 2016, C.M.P.No.4178 of 2018 in STC No.56 of 2016 and C.M.P.No.4181 of 2018 in STC No.57 of 2016 dated 22.06.2023 are quashed. It is brought to the notice of this Court that all the complaints stand posted on 21.09.2023. On that day, the complainant/PW1 shall be present before the Court below. The petitioner is directed to pay a cost of Rs.2,500/- (Rupees Two Thousand and Five Hundred only) in each complaint to PW1 on that day. Thereafter, PW1 shall be cross-examined and it shall be completed within two working days. It is made clear that if the petitioner fails to further cross-examine PW1 on the date of his appearance, the petitioner will lose his right to once again recall PW1 in future. The Court below is directed to dispose of STC Nos.54, 55, 56 and 57 of 2016, within a period of three months from the date of receipt of copy of this order.

7. In the result, all these criminal original petitions are allowed with the above directions. Consequently, connected miscellaneous petitions are closed.

30.08.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
ssr



To

1.The Judicial Magistrate II, Kancheepuram.

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2.The Public Prosecutor,
High Court, Madras.





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N.ANAND VENKATESH, J

SSR

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30.08.2023