



Crl.O.P.No.1748 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.17922 of 2023
and Crl MP No.11818 of 2022

1. M/s.Nisco Precision P Ltd
Rep. By its Director Priyadharshini
F11, A1, Tvh Swaya, Kundrathur Road,
Amaramedu, Pennanur,
Chennai 600 069

2. Priyadharshini

..Petitioners

Vs.

M/s.Kotak Mahindra Bank Limited
Rep. By its Authorised Signatory,
Mr.R.Vasu,
TVH Agnition Park, 8th Floor, 141
Old Mahabalipuram Road,
Kandhanchavadi, Chennai -96

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 05.07.2023 made in MP No.21636 of 2023 passed by the learned Metropolitan Magistrate, Fast Track Court II, Magisterial Level.

For Petitioners

: Mr.C.R.Malarvannan



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For Respondents : M/s.K.Mariappan

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ORDER

This petition has been filed challenging the order passed by the Court below dismissing the application filed under Section 311 of Cr.PC to recall PW1 for cross examination.

2. Heard Mr.C.R.Malarvannan, learned counsel for the petitioner and Mr.K.Mariappan, learned counsel for respondent.

3. The respondent filed a private complaint against the petitioner for offence under Section 138 of the Negotiable Instruments Act. PW1 was examined on the side of the respondent on 11.11.2022. The case was posted for cross-examination of PW1 on 18.01.2023. On that day, the High Court had declared holiday for all subordinate Courts and hence, the case was re-posted on 20.03.2023. On that day, the evidence on the side of the complainant was closed and the matter was posted for questioning under Section 313 of Cr.PC.

4. In the light of the above development, the petitioner filed an application under Section 311 of Cr.PC for recalling PW1 for cross examination. This application came to be dismissed by the Court below mainly on the ground



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that PW1 had already left the service of the respondent bank and there is yet another person, who is representing the respondent bank and hence, there is no scope for cross examining the person who came into the picture subsequently. The Court also took into consideration the stand taken by the petitioner while he was questioned under Section 251 and 313 of Cr.PC.

5. In the considered view of this Court, Section 139 of the Negotiable Instruments Act creates a reverse burden and hence, the petitioners will have to necessarily discharge the burden. In view of the same, one opportunity must be given to the petitioners to cross examine PW1. Even though, the officer who was examined as PW1 had left the services of the respondent bank, that person can be called to the Court for cross examination and the cross examination can be completed on the same day. The petitioners cannot be blamed for not cross examining PW1 since the day on which the matter was posted for cross examination, PW1 had already left the services and he was not present before the Court. That by itself cannot deprive the petitioners an opportunity to cross examine. If ultimately, the concerned person is not able to be brought before the Court, his evidence has to be eschewed and the person, who is now representing the respondent bank can be examined as PW1 and he can be cross examined on the side of the petitioners.



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6. In the light of the above discussion, the order passed in Crl MP No.21636 of 2023 dated 05.07.2023 is hereby set-aside. The Court below is directed to take into consideration the observations that have been made supra and provide an opportunity to the petitioners to cross examine PW1.

7. In the result, this Criminal Original petition is allowed in the above terms. Consequently, the connected miscellaneous petition is closed.

19.09.2023

Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
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To

1. Metropolitan Magistrate, Fast Track Court II, Magisterial Level.

2. The Public Prosecutor, High Court, Madras



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N.ANAND VENKATESH, J.

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