



CrI.O.P.No.22870 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :25.07.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.No.22870 of 2022

and

CrI.M.P.No.14672 of 2022

G.Shanmugam

... Petitioner

Vs.

S.Gandhimathi

... Respondent

Prayer : This Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records and set aside the order dated 11.03.2022 made in CrI.M.P.No.2806 of 2021 in C.C.No.223 of 2017 on the file of the Judicial Magistrate-II, Gobichettipalayam.

For Petitioner : Mr.A.V.Arun

For Respondent : Mr.D.Arun



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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.P.C. to recall P.W.1 for cross examination.

2.The respondent has filed a complaint against the petitioner for offence under Section 138 of the Negotiable Instruments Act. The respondent was examined as P.W.1. He was partly cross examined on the side of the petitioner on 03.03.2020. Thereafter the matter was posted on different dates and on 20.09.2021, the Court below closed the evidence of P.W.1.

3.The petitioner filed an application in Crl.M.P.No.2806 of 2021 under Section 311 of Cr.P.C. immediately seeking for recalling P.W.1 for cross examination. The same was dismissed by the Court below by an order dated 11.03.2022. Aggrieved by the same, the present petition has been filed before this Court.



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4.Heard Mr.A.V.Arun, learned counsel appearing for the petitioner and Mr.D.Arun, learned counsel appearing for the respondent.

5.On carefully going through the order passed by the Court below, it is seen that the case was adjourned from 17.03.2020 till 03.09.2021 and during this period, the Courts were not regularly functioning due to the Pandemic. Therefore, this period cannot be put against the petitioner and the petitioner has to be given one opportunity to cross examine P.W.1. This is in view of the fact that the petitioner has to rebut the legal presumption under Section 139 of the Negotiable Instruments Act. Hence, this Court is inclined to interfere with the order passed by the Court below. Accordingly, the same is set aside.

6.This Criminal Original Petition is allowed and there shall be a direction to the Court below to fix a date for the appearance of P.W.1 and on that date, the petitioner shall cross examine P.W.1 and the cross examination shall be completed on the same day. The Court below is



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directed to dispose of C.C.No.223 of 2017 within a period of two months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

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Index :Yes/No
Internet:Yes
Speaking Order/Non-speaking Order
cse

To

The Judicial Magistrate-II,
Gobichettipalayam.



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N.ANAND VENKATESH,J.

cse

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