



CrI.O.P.No.25453 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CrI.O.P No.25453 of 2022

M.Mangayarkarasi

...Petitioners

vs.

P.Saravana Kumar,
Proprietor of Thoorigai Engineers and Developers,
Thoorigal Illam, Plot No.58,
First Floor, Alamelu Nagar, Kalainagar Extn.,
Kosakulam Main Road,
Madurai 625 017.

...Respondents

PRAYER:

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed in CrI.M.P.No.4667 of 2022 in STC.No.2544 of 2022 dated 07.10.2022 on the file before the Judicial Magistrate No.II, Tambaram and direct the trial Court to permit the petitioner to re-open the above case and allow the petitioner to mark her bank statement.

For Petitioners : Mr.M.P.Saravanan



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ORDER

WEB COPY This criminal original petition has been filed challenging the order passed by the Court below dismissing the application filed under Section 311 of the Code of Criminal Procedure to reopen the case for further evidence and to permit the petitioner to mark the documents.

2. The petitioner is the complainant in a complaint filed against the respondent for the offence under Section 138 of the Negotiable Instruments Act. The case was at the stage of arguments and at this stage, the petitioner has filed an application under Section 311 of CrPC in CMP.No.4667 of 2022 to reopen the case and to allow the petitioner to mark the documents. This application came to be dismissed by the Court below by an order dated 07.10.2022 and the same has been made a subject matter of challenge in this petition.

3. Heard the learned counsel for the petitioner and perused the materials and the order passed by the Court below available on record.

4. The petitioner examined herself as PW1. She was cross examined on the side of the accused on 17.04.2021 and 23.10.2021. When the petitioner was



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cross-examined on 17.04.2021, the petitioner has stated that she will be able to

produce all the relevant documents in order to prove her financial wherewithal.

As a consequence to the same, the petitioner filed an application under Section 311 of CrPC for recalling PW1 and the same was allowed. Pursuant to the same, the petitioner had marked the documents as Ex.P7. The petitioner was also cross-examined and the same was completed on 22.03.2022. Thereafter questioning under Section 313 of CrPC was completed and the defense side evidence was closed and the matter was posted for arguments. At this stage, the present application came to be filed before the Court below.

5. In the considered view of this Court, the petitioner had sufficient opportunity to produce the relevant documents and that is why earlier an application was filed under Section 311 of CrPC and the same was allowed. The petitioner had been examined and cross-examined at least on four occasions and the same was taken into consideration by the Court below at paragraph No.7 of the order. While so, the petitioner cannot repeatedly file applications under Section 311 of CrPC. The opportunity that was given by the Court below should have been properly utilised by the petitioner. In fact, after the petitioner was recalled, Ex.P7 was marked, which according to the petitioner is the document through which the property was mortgaged and the loan was obtained. The



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Court below has carefully considered the contentions raised by the petitioner and has given sufficient reasons while dismissing the application. Hence, this Court does not find any illegality or infirmity in the order passed by the Court below.

6. In view of the above, this criminal original petition is dismissed with a direction to the Court below to complete the proceedings in STC.No.2544 of 2022 within a period of three months from the date of receipt of copy of this order.

01.08.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
nsa

To

The Judicial Magistrate No.II,
Tambaram



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N. ANAND VENKATESH, J.

nsa

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