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CrI.O.P.No.23791 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.10.2023

CORAM :

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

CrI.O.P.No.23791 of 2023

Uma Maheswari

... Petitioner

-VS-

Selvaraj

...Respondent

PRAYER : Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records in S.T.C. No.2533 of 2019 on the file of the Judicial Magistrate No.II, Pollachi and set aside the order dated 12.09.2023 dismissing the petition in C.M.P.No.2517 of 2023.

For Petitioner : Mr.K.Balasubramaniam

ORDER

Being aggrieved by the dismissal of the petition under Section 311 of Cr.P.C, the petitioner is before this Court. The background of the facts which led to the present Original Petition are as under:



2. The petitioner is an accused in a private complaint under Section 138 of the Negotiable Instruments Act, pending on the file of the Judicial Magistrate No.II, Pollachi in S.T.C. No.2533 of 2019. After completion of examination of witnesses on the side of the prosecution, the accused and his wife who mounted the witness box has been examined as D.W.1 and D.W.2. Thereafter, this petition has been filed under Section 311 of Cr.P.C to summon one Abdul Nazar whom according to the petitioner aware of the transaction and his examination is necessary to discharge the burden of presumption against him.

3. The trial Court had considered the request and declined to entertain the petition for the reason that the complaint was taken on file in the year 2015, the complainant was examined on 08.01.2016 and 18.08.2017, he was recalled and cross examined on 01.08.2018. Thereafter, the accused has marshalled his side evidence and two witnesses were examined. When the trial is about to be completed, this petition is filed to summon a witness, his name and role never been whispered by this petitioner at any point of time and therefore considering that the petition is only to protract the proceedings, the trial Court has dismissed this petition under Section 311 of Cr.P.C.



4. This Court on perusing the records find no perversity and illegality in the order passed by the trial Court. Section 138, has been instituted in the year 2015, and prolonged nearly 9 years and at no point of time, this petitioner had disclosed about Abdul Nazar. Also, to be noted on that neither the petitioner replied to the statutory notice sent to her before filing the complaint nor she included his name in the list of witnesses to be examined, when she was given opportunity to disclose witnesses proposed to be examined. She had examined only two witnesses and thereafter, she has filed this petition under 311 of Cr.P.C which obviously to delay the process. Hence this petition is dismissed.

20.10.2023

Index : Yes/No

Neutral Citation : Yes/No

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To

1.The Judicial Magistrate No.II,
Pollachi.

2.The Public Prosecutor,
Madras High Court, Madras.



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Dr.G.JAYACHANDRAN, J.

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