



Crl.O.P.No.24793 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :29.11.2023

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.24793 of 2023

and

Crl.M.P.Nos.17251 and 17252 of 2023

N.Baskar Iyer

.. Petitioner

/versus/

Shanmuga Vaidvu

.. Respondent

Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records and set aside the order dated 29.09.2023 passed in Crl.M.P.No.11807 of 2023 in S.T.C.No.4 of 2020 on the file of the Judicial Magistrate No.1, Krishnagiri.

For Petitioner :Mr.C.Arun Kumar



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ORDER

The petitioner herein is the accused in S.T.C.No.4 of 2020 on the file of the Judicial Magistrate No.1, Krishnagiri. Proceedings initiated on a private complaint in connection with a cheque given by the petitioner for a sum of Rs.95,000/- was returned for want of fund, when the same was presented for collection. On 30.11.2022, the complainant had mounted the witness box and completed the examination in chief. On 12.04.2023, the accused had cross examined PW-1 in part and took adjournments. Later, inspite of several adjournments, he did not cross examine PW-1. Hence, the evidence of PW-1 was closed. The trial Court has proceeded further.

2. At this juncture, the petitioner has filed a petition under Section 311 Cr.P.C., to recall PW-1 and complete his remaining portion of cross examination. The trial Court, after considering the petition and counter filed by the complainant dismissed with a cost of Rs.1000/- payable to the Mediation Centre at Krishnagiri. The reason for dismissal is two fold. First, after examining PW-1 on 12.04.2023 in part, the case was adjourned



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to 05.05.2023, 09.06.2023, 16.06.2023, 28.07.2023 and 18.08.2023, but the accused did not cross examine the witness, who was present. However, on closure of his evidence, recording the reason the petition has been dismissed. Secondly, though the learned counsel was present and filed the petition under Section 309 of Cr.P.C, false reason has been given for not cross examining the witness as if the learned counsel was not present. The said order is now under challenge in this petition filed under Section 482 of Cr.P.C.

3. The learned counsel appearing for the petitioner submitted that to show the bonafide of the accused, he has paid the cost of Rs.1000/- at the Mediation Centre, Krishnagiri on 10.11.2023. The reason for not cross examining the witness is genuine and only through the junior counsel on record, the petition under Section 309 of Cr.P.C was filed contending that if an opportunity is not given to the petitioner to cross examine the complainant, he will be highly prejudice, since reverse burden of proof is on the accused insofar as the offence under Section 138 of the Negotiable Instruments Act, 1881.



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4. The learned counsel appearing for the petitioner submitted that the case is adjourned to 22.12.2023 for further examination on the side of the complainant. The accused has no defence witness and if an opportunity is given to cross examine PW-1 on that day, he will complete the cross examination on the side of the complainant.

5. In the light of the above facts and stage of the trial, this Court is of the view that an opportunity may be given to the accused to complete the cross examination of PW-1, if he is ready to cross examine PW-1 on the next hearing date. Accordingly, this Criminal Original Petition is allowed on condition:-

The petitioner shall cross examine PW-1/ complainant on the next hearing date and he shall pay the cost of Rs.1000/- to the complainant before commencing the cross examination. In case, PW-1 is present and the petitioner is not ready to cross examine on the date of hearing, the opportunity given to the



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petitioner to further cross examine PW-1 stands
withdrawn.

Consequently, connected Miscellaneous Petitions are closed.

29.11.2023

Index:yes/no

Internet:yes/no

Netural Citation:yes/no

To:

1.The Judicial Magistrate No.1 Court, Krishnagiri.

2.The Public Prosecutor, High Court, Madras.



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