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Crl.O.P.No.25442 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :07.11.2023

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.25442 of 2023

and

Crl.M.P.No.17632 of 2023

G.Sivakumar

... Petitioner

Vs.

M/s.Sundaram Home Finance Limited,
Door No.46, Whites Road, Fifth Floor,
Royapettah, Chennai-600 014.

Rep.by its Assistant Manager-Legal
Mr.Sunil B Shankar

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleaded to set aside the non speaking order passed in unnumbered M.P.of 2023 in S.T.C.No.4022 of 2022, dated 11.10.2023 by the V Fast Track Metropolitan Magistrate Court, Saidapet, Chennai.

For Petitioner : Mr.S.B.Viswanathan

ORDER

The petitioner herein is the accused in a private complaint filed under Section 138 of Negotiable Instruments Act taken on file in S.T.C.No.4022 of 2022 on the file of the Metropolitan Magistrate, Saidapet, Chennai.



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2. Being aggrieved by the order of the trial Court allowing the application under Section 311 Cr.P.C., filed by the complainant, the present petition is filed.

3. According to the petitioner, the docket order allowing the application is cryptic, non speaking and passed without affording opportunity to the petitioner on the first glance of the impugned order substantiate the submissions made by the petitioner herein. However, on perusing the record, this Court finds that the trial on the private complaint was commenced on 10.04.2023. When the complainant has given his statement at pre cognizance stage, on memorandum the statement been considered as the chief examination and the witness was cross examined by the complainant counsel partly on 12.09.2023. The cross examination got completed on 25.09.2023 and the matter was adjourned to 11.10.2023 for production of further evidence on the side of complainant.

4. On 11.10.2023 the complainant has filed application under Section 311 of Cr.P.C., seeking permission to reopen the prosecution side evidence for the purpose of giving evidence by marking certain documents.



This petition has been heard and allowed, which is now challenged by the accused for the reason stated above. The sequence of events and the order passed by the trial Court is no way prejudice the petitioner herein, since the order was passed on the date of hearing of the main case and admittedly the complainant was also present. The petitioner submits that he was not given opportunity to file counter as stated above. When Section 311 Cr.P.C., filed stating reason that during the cross examination, certain questions were put about the statement of account and the outstanding amount by the complainant. There is necessity to mark such relevant document to prove the liability of the respondent. The Court has considered this reason and allowed the application under Section 311 Cr.P.C.

5. Perusal of the application under Section 311 Cr.P.C., will clearly show that the Magistrate has the power to summon material witness or examining person presence at any stage of an enquiry, trial or other proceedings or recall or re-examine any person already examined, if his evidence appears to be essential to the just decision of the case.



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Dr.G.JAYACHANDRAN, J.

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6. It is a case where the witness was present in the Court on the date of allowing the application and the trial Court in its wisdom had felt that re-examination of witnesses is essential in the interest of arriving at just decision by allowing this application, though cryptic order no prejudice will be caused to the petitioner. Contrarily his application not allowed, it will cause prejudice to the complainant who had been cross examined certain documents which he in his discretion not produced before the Court during the chief examination. Hence this Criminal Original Petition is dismissed. Consequently, the connected Crl.M.P., is also dismissed.

07.11.2023

Index : Yes/No
Neutral Citation : Yes/No
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To

The V Fast Track Metropolitan Magistrate Court, Saidapet, Chennai.

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