



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.04.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **G.ILANGO VAN**

CrI.O.P.(MD)No.19236 of 2022
and CrI.M.P(MD).No.12990 of 2022

S.Mani

... Petitioner

Vs.

J.Jebamoni Dhas

... Respondent

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to the impugned order dated 05.08.2022 in CrI M.P No. 4176/2022 in S.T.C No. 712/2016 passed by the learned Judicial Magistrate No.1, Padmanabapuram and set aside the same.

For Petitioner : Mr.V.K.Sathiyamurthy
For Respondent : Mr.H.Thayumanaswamy

ORDER

This petition has been filed to call for the records pertaining to the order passed in CrI M.P No. 4176/2022 in S.T.C No. 712/2016 dated 05.08.2022 on the file of the Judicial Magistrate No.1, Padmanabapuram.



WEB COPY

2. The petitioner is facing trial before the Court below and several witnesses were examined in chief on various dates. Due to the non availability of the necessary documents, the petitioner's counsel did not cross-examine the witness P.W.1 in full. Thereafter, the petitioner filed the petition under Section 311 of Cr.P.C., to recall the above said witness and the same was dismissed on 05.08.2022 on flimsy reason. Hence, this petition is filed.

3. The learned counsel for the respondent submitted that several opportunities were given to the petitioner to cross examine the witness the P.W.1 and the same was not utilized by the petitioner.

4. Heard both sides.

5. Perusal of records shows that petitioner is facing serious offence under Section 138 of Negotiable Instrument Act and the case is pending from the year 2016. Therefore, one more opportunity should be given to the petitioner to cross examine P.W.1.

6. Considering the fact that petitioner is facing trial under Section 138 of Negotiable Instrument Act, without cross examination of the



witness P.W.1, a fair judgment may not be possible. On the sole ground, one more opportunity is given to the petitioner on stringent condition.

The petitioner is directed to pay Rs.5,000/- (Rupees Five Thousand Only), as cost to P.W.1 to the credit of S.T.C.No.712 of 2016 within a week from the date of receipt of copy of this order. On such payment, the trial Court may fix the date for cross examine the witness of P.W.1. On that date the petitioner's counsel must cross examine the P.W.1 without fail. If any failure is noticed on the part of the petitioner's counsel, his further right of cross examination of P.W.1 will be forfeited forever.

7. With the above said direction, this petition stands allowed and the order passed by the learned Judicial Magistrate No.1, Padmanabapuram, in CrI M.P No. 4176/2022 in S.T.C No. 712/2016, dated 05.08.2022, is quashed. Consequently, the connected Criminal Miscellaneous Petition is closed.

10.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
TTA

To

learned Judicial Magistrate No.1, Padmanabapuram



WEB COPY



CrI.O.P.(MD)No.19236 of 2022

G.ILANGOVAN. J.

TTA

CrI.O.P.(MD)No.19236 of 2022

10.04.2023