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Crl.O.P.No.150 of 2024

In the High Court of Judicature at Madras

Dated : 26.2.2024

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Criminal Original Petition No.150 of 2024
& Crl.M.P.No.134 of 2024

Baskar		...Petitioner
	Vs	
Karthick		...Respondent

PETITION under Section 482 of the Criminal Procedure Code praying to set aside the order passed by the learned Judicial Magistrate No.1, Ponneri, Thiruvallur District in Crl.M.P.No.2959 of 2023 in S.T.C.No.252 of 2022 dated 22.11.2023 and permit the petitioner to cross examine P.W.1 - complainant.

For Petitioner	:	Mr.T.R.Ravi
For Respondent	:	Mr.R.Sasikumar

ORDER

This is a petition filed by the petitioner challenging the order dated 22.11.2023 passed by the learned Judicial Magistrate No.1, Ponneri, Thiruvallur District in Crl.M.P.No.2959 of 2023 in S.T.C.No. 252 of 2022 dismissing the petition filed under Section 311 of the Criminal Procedure Code to recall P.W.1 for cross examination.



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2. When the matter came up for hearing on 05.1.2024, this Court passed the following order :

"Notice to the respondent, returnable by 05.02.2024. Private notice is also permitted.

2. The petitioner is also permitted to serve notice on the learned counsel appearing on behalf of the respondent before the Court below.

3. It is seen from the order passed by the Court below that the petitioner had already filed an application under Section 311 of Cr.P.C., in Crl.M.P.No.1034 of 2023 and this application was allowed on 12.05.2023. In spite of the same, the petitioner did not choose to cross-examine P.W.1 for nearly ten hearings. Therefore, the evidence of P.W.1 was closed on 11.10.2023. Thereafter, the petitioner has once again filed an application under Section 311 of Cr.P.C., for recalling P.W.1 for cross-examination. The same has been dismissed.

4. If the petitioner wants an opportunity to recall and cross-examine P.W.1, such an opportunity can be given after exercising the jurisdiction under Section 143(A) of Negotiable Instruments Act. It is a fit case where the petitioner must be directed to deposit a part of the cheque amount. In view of the same, there shall be a direction to the petitioner to deposit a sum of Rs.1,00,000/- before the Trial Court in S.T.C.No.252 of 2022 on or before 02.02.2024. If the petitioner deposits this amount, this Court will consider giving an opportunity to the petitioner to recall and cross-examine P.W.1.

5. Post this case on 05.02.2024 under the caption 'for orders'. In the meantime, the Court below



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shall keep the proceedings in abeyance."

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3. Once again when the matter was posted for hearing on 05.2.2024, this Court passed the following order :

"When the matter was taken up for hearing, the learned counsel for the petitioner submitted that a sum of Rs.1,00,000/- has been deposited before the Court below on 02.02.2024. The learned counsel submitted that due to inadvertence, the private notice was not taken on the respondent.

2. Taking into consideration the above submission, there shall be a direction to the learned counsel for the petitioner to take private notice to the respondent, returnable by 19.02.2024. The petitioner is also permitted to serve notice on the counsel appearing on behalf of the respondent before the Court below.

3. Post this case under the same caption on 19.02.2024. Interim order already granted by this Court is extended."

4. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent.

5. Even when the earlier order was passed on 05.1.2024, this Court directed the petitioner to deposit a sum of Rs.1 lakh and accordingly, the said amount has also been deposited. In view of the compliance of the order passed by this Court on 05.1.2024, this Court is inclined to give one last opportunity to the petitioner to recall



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P.W.1 for cross examination. It is brought to the notice of this Court that the main case is now posted for hearing on 20.3.2024 before the Court below.

6. In the result, the above criminal original petition is allowed and the order dated 22.11.2023 passed by the learned Judicial Magistrate No.1, Ponneri, Thiruvallur District in Crl.M.P.No.2959 of 2023 in S.T.C.No.252 of 2022 is set aside. Since S.T.C.No.252 of 2022 is now posted for hearing on 20.3.2024, P.W.1 shall be present before the Court below and shall be cross examined by the petitioner on the same day itself. If, for any reasons, the petitioner fails to cross examine P.W.1 on 20.3.2024, the petitioner will lose his right to recall P.W.1 in future. The Court below shall complete the proceedings in S.T.C.No.252 of 2022 within a period of three months from the date of receipt of a copy of this order. Consequently, the connected Crl.M.P. is closed.

26.2.2024

RS



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N.ANAND VENKATESH,J

RS

To

1.The Judicial Magistrate No.1,
Ponneri, Thiruvallur District.

2.The Public Prosecutor,
High Court, Madras.

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