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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P No.1976 of 2024
and CRL.M.P No.1433 of 2024

Peter Arivarasan

...Petitioner

Vs.

Muruganantham

...Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order passed in CrI.M.P.No.54694 of 2023 dated 06.01.2024 in STC No.2281 of 2023 on the file of the learned Metropolitan Magistrate FTC No.III, Egmore @ Allikulam, Chennai.

For Petitioner : Mr.S.Suresh

For Respondent : Mr.M.Ganesh

ORDER

This criminal original petition has been filed challenging the order passed by the Court below in CrI.M.P.No.54694 of 2023 dated 06.01.2024, dismissing the application filed under Section 311 of Cr.P.C., to recall PW1 for further cross-examination.



2. Heard the learned counsel for the petitioners and the learned counsel appearing on behalf of the respondent.

3. The petitioner is facing trial before the Court below for offence under Section 138 of the Negotiable Instruments Act. The respondent/complainant was examined as PW1. The petitioner did not cross-examine the respondent immediately. Later he filed CrI.M.P.No.34922 of 2023 to recall PW1 for cross-examination. This application was allowed and PW1 was recalled and he was cross-examined on 19.09.2023. The evidence of PW1 was also closed and the case was at the stage of examination of defence witness. At that stage, the present application came to be filed seeking for recall PW1 for further cross-examination.

4. The Court below came to a conclusion that PW1 has already been cross-examined after he was recalled and therefore, there are no merits in the application filed by the petitioner and accordingly, the application was dismissed.

5. This Court had put a pointed question to the learned counsel for the petitioner as to why PW1 has to be recalled for further cross-examination, when



PW1 was already recalled and he was cross-examined on 19.09.2023. The learned counsel submitted that when the cross-examination took place on 19.09.2023, re-examination was done on the side of the respondent/complainant and a document was also marked. No cross-examination was done with respect to the said re-examination and the document that was marked. Therefore, the petitioner wants to recall PW1 for further cross-examination only for this purpose.

6.It was brought to the notice of this Court that the case is now posted for hearing on 15.02.2024. Considering the facts and circumstances of the case, this Court deems it fit to give one last opportunity to the petitioner to cross-examine PW1 for the limited scope for which such cross-examination has been sought for. Hence, the respondent/complainant shall be present before the Court below on 15.02.2024 and on that day, the further cross-examination shall be completed on the side of the petitioner. If for any reasons, the petitioner fails to further cross-examine PW1 on the day of his appearance, the petitioner will lose his right to recall PW1 in future.

7.In the result, the order passed by the Court below in CrI.M.P.No.54694 of 2023 dated 06.01.2024, is hereby set aside and this criminal original petition



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N.ANAND VENKATESH, J

ssr

stands allowed in the above terms. Consequently, connected miscellaneous petition is closed.

01.02.2024

Index: Yes/No

Speaking order/Non-speaking Order

Neutral Citation: Yes/No

ssr

To

1.The Metropolitan Magistrate FTC No.III, Egmore @ Allikulam, Chennai.

2.The Public Prosecutor,
High Court, Madras.

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