



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P No.2844 of 2024

Tamilvanan

...Petitioner

Vs.

Prabakaran

...Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records and set aside the order dated 08.11.2023 made in Crl.M.P.No.1166 of 2022 in STC No.62 of 2022, on the file of the learned Judicial Magistrate No.I, (FAC), FTC Attur, Salem District.

For Petitioner : Mr.D.Ashokkumar

ORDER

This criminal original petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioner under Section 311 of Cr.P.C., to recall PW1 for cross-examination.

2.The petitioner is facing trial before the Court below for offence under Section 138 of the Negotiable Instruments Act. The complainant examined himself as



PW1, and he was not cross-examined. Therefore, the petitioner filed an application to recall PW1 for cross-examination. This application was taken on file on 12.05.2023.

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Since the petitioner did not prosecute this application diligently, the Court below dismissed the application by order dated 08.11.2023. Aggrieved by the same, the present petition has been filed before this Court.

3.The learned counsel for the petitioner submitted that the case is now at the stage of hearing Crl.M.P.No.2 of 2024 which has been filed by the petitioner to recall PW2 for cross-examination.

4.Taking into consideration the facts and circumstances of the case and also of the fact that the petitioner has to rebut the presumption under Section 139 of the Negotiable Instruments Act, an opportunity can be given to the petitioner to recall PW1 for cross-examination.

5.In view of the above, the order passed by the Court below dismissing the application for non-prosecution by an dated 08.11.2023, is hereby set aside. The Court below is directed to issue notice to the respondent in this application and fix a date for deciding this application on its own merits and in accordance with law. It is made clear that one last opportunity is given to the petitioner to effectively defend

himself in this case and this Court expects the petitioner not to drag on the



proceedings any further.

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6.This petition is accordingly allowed and there shall be a direction to the Court below to complete the proceedings in STC No.62 of 2022, within a period of three months from the date of receipt of copy of this order.

12.02.2024

Index: Yes/No
Internet: Yes/No
ssr

Note: Issue Order Copy on 15.02.2024

To

- 1.The Judicial Magistrate No.I, (FAC), FTC Attur, Salem District.
- 2.The Public Prosecutor,
High Court, Madras.



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N.ANAND VENKATESH, J

SSR

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