



Crl.O.P.No.3855 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2024

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.3855 of 2023

N.Manjunath

...Petitioner

Vs.

C.Subramaniam

...Respondent

Criminal Original Petition under Section 482 of the Criminal Procedure Code praying to set aside the order dated 22.11.2022 made in Crl.M.P.No.4071 of 2021 in S.T.C.No.129/2020 on the file of the Judicial Magistrate, Fast Track Court, Hosur.

For Petitioner : Mr.M.Jayachandran

**ORDER**

This petition has been filed challenging the order passed by the Court below dated 22.11.2022 in Crl.M.P.No.4071 and 4072 of 2022, dismissing the applications filed for reopening and to recall PW.1 for cross examination.

2. The petitioner is facing trial before the Court below for offence



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under Section 138 of the Negotiable Instrument Act. The respondent / complainant examined himself as P.W.1 on 30.09.2021. The petitioner did not cross examine P.W.1. Questioning under Section 313 Cr.P.C. was also over. At that stage, the petitioner filed two applications for reopening and to recall P.W.12 for cross examination. These applications came to be dismissed by the Court below on the ground that the petitioner did not take any steps to cross examine P.W.1 for a long time and the petitioner only wanted to drag on with the proceedings. Aggrieved by the same, the present petition has been filed before this Court.

3. When the matter came up for hearing on 29.08.2023, this Court passed the following order:

*"Issue notice to the respondent, returnable by 13.09.2023. Private notice is also permitted.*

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

*3. The petitioner is directed to deposit a sum of Rs.50,000/- (20% of the cheque amount) on or before 12.09.2023. Subject to the compliance with this condition, this Court is inclined to give on last opportunity to the petitioner to cross-examine PW1.*



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*4. Post this case under the caption "For Orders" on 13.09.2023.*

*5. In the meantime, the proceedings in STC.No.129 of 2020 before the Court below shall be kept in abeyance."*

4. The matter was thereafter posted for hearing on 13.09.2023 and it was submitted on the side of the petitioner that the sum of Rs.50,000/- as directed by this Court was deposited on 08.09.2023.

5. The respondent has been served with notice and the affidavit of service has also been filed. There is no representation for the respondent, either in person or through counsel.

6. In the considered view of this Court, the petitioner has to necessarily rebut the presumption under Section 139 of the Negotiable Instrument Act. Therefore, the petitioner must be given an opportunity to cross examine P.W.1.

7. The learned counsel for the petitioner submitted that the case has



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been posted before the Court below on 23.01.2024 for final arguments.

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8. The Court below is directed to reopen the evidence and recall P.W.1. If P.W.1 is present in the Court on 23.01.2024, he shall be cross examined by the petitioner on the same day. If the complainant is absent on that day, the Court below can fix any other date and on the date of appearance, P.W.1 shall be cross examined. For any reason, if the petitioner fails to cross examine P.W.1 on the date of his appearance, the petitioner will lose his right to recall this witness in future.

9. In the result, this Criminal Original Petition is allowed with the above directions.

**11.01.2024**

Index : Yes/No  
Speaking Order : Yes/No

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**Note: Issue order copy on 18.01.2024.**

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To

1.The Inspector of Police,  
Gobichettipalayam Police Station,  
Erode District.

2.The Public Prosecutor,  
High Court, Madras.

N.ANAND VENKATESH,J.

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