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Criminal Original Petition No.3757 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Criminal Original Petition No.3757 of 2024

and

Crl.M.P.No.2764 of 2024

1.M/s.Ramcharan Company Pvt. Ltd.,
represented by its Director Kaushik A.Palicha

2.Kaushik A. Palicha
S/o.Ajithkumar Palicha

3.Divyesh A.Palicha
S/o.Ajithkumar Palicha

... Petitioners

Vs.

Suneel H.Shah
S/o.Hirachand K.Shah

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to set aside the impugned order dated 10.01.2024 passed by learned XIII Small Causes Court, Chennai, in Crl.M.P.No.3761 of 2023 in STC No.563 of 2022.

For Petitioners : Mr.Sanjay Pinto

For Respondent : Mr..K.P.Ananthakrishnan



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ORDER

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This Criminal Original Petition has been filed challenging the order passed by the Court below in CrI.M.P.No.3761 of 2023 in STC No.563 of 2022, dated 10.01.2024, allowing the application filed by the respondent/complainant u/s.311 Cr.P.C. to reopen and to once again examine PW-1 for the purpose of marking certain documents.

2. Heard Mr.Sanjay Pinto, learned counsel for petitioners and Mr..K.P.Ananthakrishnan, learned counsel appearing for respondent.

3. The petitioners are facing trial before the Court below for an offence u/s.138 of the Negotiable Instruments Act. The respondent/complainant examined himself as PW-1 and certain documents were also marked. Before PW-1 was cross-examined, the respondent filed an application u/s.311 Cr.P.C. to reopen and to further continue examination of PW-1 for the purpose of marking certain documents. The Court below, on considering the rival submissions, came to the conclusion that an opportunity can be given to the respondent and



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accordingly, allowed the application by order dated 10.01.2024. The same has been put to challenge in the present petition.

4. Learned counsel for petitioners submitted that the respondent is attempting to come out with a new case, which has not even been pleaded in the complaint, by way of introducing certain new documents. Learned counsel, by relying upon the judgment of the Apex Court in ***Rajaram Prasad Yadav v. State of Bihar & another [(2013) 14 SCC 461]*** submitted that an application u/s.311 Cr.P.C. cannot be filed for the purpose of filling up the lacuna and to introduce a new case, which defeats the defence of the accused.

5. In the instant case, PW-1 was examined in chief only and certain documents have been marked. PW-1 wants to mark some more documents and therefore, has filed an application to reopen and to continue with the examination in chief. If there is any objection regarding marking of documents or if there are arguments to be addressed on the scope of these documents *qua* the complaint, the petitioners have sufficient opportunity to do so at the time of marking of the documents or



at the time of cross-examining PW-1. In the instant case, it is not as if the petitioners had already established their defence and that is sought to be reversed/defeated by introducing some new documents. The petitioners have not cross-examined PW-1 and therefore, the petitioners have sufficient opportunity to make their objections and also cross-examine PW-1 in that regard.

6. The Court below was perfectly right in allowing the application since ultimately the respondent/complainant has to first establish a case before the Court and therefore, an opportunity must be given to the respondent/complainant to do so. There is no ground to interfere with the order passed by the Court below. The clarity given by this Court will sufficiently take care of the interest of both parties.

7. It is brought to the notice of this Court that the witnesses are not acquainted with Tamil language and therefore, the evidence can be recorded in English. The Court below can proceed further and record the evidence in English language since the witnesses know only that language and it will be more appropriate for them to sign the deposition after



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understanding what they deposed before the Court. Learned counsel on either side do not have any objection in carrying out this direction.

This Criminal Original Petition is disposed of in the above terms.

Consequently, connected miscellaneous petition is closed.

21.02.2024

Speaking Order/Non-speaking Order

Index :Yes/No

Neutral citation: Yes/No

gm

To

The XIII Small Causes Court,
Chennai.

N.ANAND VENKATESH, J



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