



Crl.O.P.No.5493 of 2024

In the High Court of Judicature at Madras

Dated : 26.3.2024

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Criminal Original Petition No.5493 of 2024
& Crl.M.P.No.4013 of 2024

G.Palani

...Petitioner

Vs

S.Panneerselvam

...Respondent

PETITION under Section 482 of the Criminal Procedure Code praying to set aside the order passed in Crl.M.P.No.569 of 2024 in S.T.C.No.204 of 2021 dated 08.2.2024 on the file of the Judicial Magistrate, Polur, Tiruvannamalai District dismissing the petition for seeking to cross PW1 by the petitioner.

For Petitioner : Mr.R.Chandrasekaran
For Respondent : Mr.S.Gunaseelan

ORDER

This is a petition filed by the petitioner challenging the order dated 08.2.2024 passed by the Judicial Magistrate, Polur, Tiruvannamalai District (the Court below) in Crl.M.P.No.569 of 2024 in



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S.T.C.No.204 of 2021 dismissing the petition filed by the petitioner under Section 311 of the Criminal Procedure Code to recall the respondent (PW1) for cross examination.

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

3. The petitioner is facing trial before the Court below for an offence under Section 138 of the Negotiable Instruments Act (for short, the Act). The respondent/complainant examined himself as PW1 in this case. The chief examination of the respondent (PW1) was over on 22.7.2022. Even though several opportunities were given to the petitioner, the respondent (PW1) was not cross examined and hence, the evidence on the side of the respondent (PW1) was closed. Thereafter, the petitioner filed Crl.M.P.No.6436 of 2022 seeking to recall the respondent (PW1) for cross examination. The said miscellaneous petition was allowed by a conditional order dated 06.2.2023 directing the petitioner to pay cost to the tune of Rs.1,000/- to the respondent and the petitioner also accepted to cross examine the respondent (PW1) on 13.2.2023. Further, it was made clear in the



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said order dated 06.2.2023 that the petitioner should cross examine the respondent (PW1) on 13.2.2023 without fail and in default, the said miscellaneous petition would stand dismissed.

4. But, the respondent was not cross examined even on 13.2.2023. Subsequently, the petitioner filed the present miscellaneous petition in Crl.M.P.No.569 of 2024 seeking extension of time for payment of cost. However, it came to be dismissed by the Court below vide the impugned order. Aggrieved by that, the petitioner is before this Court.

5. When the matter came up for hearing on 07.3.2024, this Court passed the following order :

"Notice to the respondent returnable by 25.03.2024. Private Notice is also permitted.

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

3. On going through the order passed by the Court below, this Court does not find any illegality or infirmity warranting any interference. However, the petitioner has to discharge the burden under Section 139 of Negotiable Instruments Act, 1881



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and therefore this Court deems it fit to give one last opportunity to the petitioner to recall P.W.1 for cross examination. However, this opportunity will be given only by putting the petitioner on condition. This Court is inclined to invoke Section 143 A of the Negotiable Instruments Act, 1881. Accordingly, the petitioner is directed to deposit 20% of the cheque amount before the Court below on or before 25.03.2024. On such deposit, this Court will consider to recall P.W.1 for cross examination.

4. Post this case under the caption 'for orders' on 25.03.2024. In the mean time, the proceedings shall be kept in abeyance."

6. When the matter is taken up for hearing today, the learned counsel for the petitioner submits that the said conditional order dated 07.3.2024 passed by this Court has been complied with and that the petitioner deposited a sum of Rs.5 lakhs before the Court below on 15.3.2024 and the original receipt for the deposit made is also filed before this Court.

7. The learned counsel appearing for the respondent submits that the complaint was filed in the year 2021, that the respondent was



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examined as PW1 in the year 2022 and that the petitioner, for one reason or the other, has not cross examined the respondent (PW1) and as a result, the case is kept pending for nearly three years. He vehemently opposes interference with the order passed by the Court below.

8. This Court took into consideration the conduct of the petitioner, exercised its powers under Section 143A of the Act and by the said order dated 07.3.2024, directed the petitioner to deposit 20% of the cheque amount. The petitioner also made the said deposit before the Court below. That apart, there is a legal burden cast upon the petitioner under Section 139 of the Act and hence, one opportunity must be given to him to establish his defence by cross examining the respondent (PW1). Therefore, this Court is inclined to grant one opportunity to the petitioner to recall the respondent (PW1) for cross examination.

9. In the light of the above discussions, the above criminal original petition is allowed and the impugned order dated 08.2.2024 passed in Crl.M.P.No.569 of 2024 in S.T.C.No.204 of 2021 on the file



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of the Judicial Magistrate, Polur, Tiruvannamalai District is hereby set aside. The Court below is directed to fix the date of hearing on 01.4.2024 and on that day, the respondent (PW1) shall be present before the Court below. The cross examination of the respondent (PW1) shall be completed on the same day. If, for any reason, the petitioner fails to cross examine the respondent (PW1) on the said date, the petitioner will lose his right to recall the respondent (PW1) at a future point of time. There shall be a direction to the Court below to complete the proceedings in S.T.C.No.204 of 2021 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.

26.3.2024

To
1.The Judicial Magistrate, Polur.
2.The Public Prosecutor,
High Court, Madras.

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N.ANAND VENKATESH,J

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