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Crl.O.P.No.11251 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:27.06.2024

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.O.P.No.11251 of 2024

and

Crl.M.P.No.7611 of 2024

Mr.S.Josuva

.. Petitioner

/versus/

Mr.Sunil Bhajanal Gaba

.. Respondent

Criminal Original Petition has been filed under Section 482 of Cr.P.C., praying to call for the records of Crl.M.P.No.197 of 2024 in S.T.C.No.645 of 2022 dated 20.03.2024 on the file of XV Small Cause Court at Chennai and set aside the same.

For Petitioner :Mr.S.Karthikeyan for
Mr.K.Thenrajan

For Respondent :Mr.M.Guruprasad



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ORDER

The petitioner herein has filed this petition to set aside the order passed by the trial Court in Crl.M.P.No.197 of 2024, filed under Section 311 of Cr.P.C.

2. The grievance of the petitioner is that he being the accused for issuing a cheque for the value of Rs.70 lakhs, to discharge the burden, has to cross examine PW-1 and when an opportunity was given to him, due to unavoidable reason, he failed to cross examine the witness extensively. Therefore, when the petition under Section 311 of Cr.P.C., was filed on 09.11.2024, the same was objected by the complainant and accepting the objection of the complainant, the trial Court has dismissed the petition, thereby valuable right to cross examine the witness to discharge the burden has been deprived.

3. The learned counsel appearing for the defacto complainant submitted that the petition to recall the witness was filed without assigning proper reason and the deposition of PW-1 would clearly show



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that he has been extensively cross examined. When further opportunity has been given to the petitioner to cross examine PW-1, he failed to avail that opportunity. Hence, the present petition is filed only to delay the process and threaten the complainant to withdraw the proceedings. Therefore, the petition has to be dismissed.

4. Heard the learned counsel on either side.

5. This Court finds that the cheque dated 21.01.2021 for Rs.70 lakhs, is the subject matter of the complaint, pending on the file of the XV Court of Small Causes, Chennai, in S.T.C.No.645 of 2022 and the evidence of PW-1 was closed on 03.01.2024. Now, the case was adjourned to 15.01.2024 for defence side witness. The petitioner has not yet furnished proposed list of witnesses to be examined on his side. He has prepared to deposit 10% of the cheque amount as pre-condition to avail the opportunity for further cross examination of PW-1. According to the learned counsel appearing for the petitioner, the recall of PW-1 is essential to put forth the defence and discharge the burden.



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6. The learned counsel appearing for the respondent/complainant submitted that if the accused comes forward to deposit 10% of the cheque amount and cross examine the witness on the day, for the said purpose, it may not have any objection and In any event, it should not further delay the progress of the trial.

7. Considering the above submissions, this Criminal Original Petition is allowed, on condition that the petitioner shall deposit 10% of the cheque amount before the trial Court along with the petition for recall of PW-1. If such petition is filed, within 30 days from today, the same may be allowed, on condition that, the petitioner shall cross examine the witness the day fixed for hearing. Meanwhile, there is no impediment for the trial Court to proceed for examining of the defence witnesses. Consequently, connected Miscellaneous Petition is closed.

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Index:yes/no
Speaking order:yes/no
Neutral Citation:yes/no
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To:

The XV Small Causes Court, Chennai.



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DR.G.JAYACHANDRAN,J.

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