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CrI.O.P.No.13608 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.O.P.No.13608 of 2024

and

CrI.M.P.No.8263 of 2024

Piyush Enterprises
Represented by Proprietor
Mr.Rajesh Jayanthilal Shah
No.610-E, Sudhashree Apartment Lane,
Shahupuri, Kolhapur-416 001.

... Petitioner

Vs.

M/s.S.S.D.Oil Mills Company Ltd.,
Having its registered office at
No.52, (Old No.36), 48th Street,
Ashok Nagar, Chennai-600 083
Represented by Authorized Person,
Deputy Manager-Branch Accounts
A.Selvam

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleaded to set aside the order passed in CrI.M.P.No.1609 of 2024 dated 13.03.2024 in S.T.C.No.329 of 2016 on the file of the Court of the Fast Track, Poonamallee, Thiruvallur.

For Petitioner : Mr.Samir Shah

ORDER



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A private complaint under Section 138 of Negotiable Instruments

Act, for dishonouring cheque of Rs.10 lakhs is pending before the Judicial Magistrate, Poonamallee since 2016. The accused herein has filed application under Section 311 Cr.P.C., to recall PW.1, the complainant to cross examine him.

2. The trial Court, after considering the reason stated in the recall petition and the other facts and circumstances, had dismissed the application on relying upon the judgment of the Hon'ble Supreme Court rendered in *Vinod Kumar Vs. State of Punjab (2015 3 SCC 220)*. Being aggrieved the present petition is filed to set aside the order passed by the trial Court and allow Section 311 Cr.P.C ., petition.

3. The learned counsel appearing for the petitioner submitted that the petitioner herein was appointed as a dealer by the complainant. Since breach of terms of the dealership agreement, the complainant company appointed other person as dealer and thereby caused loss. In this connection there is a civil suit pending, wherein, the complainant has also filed counter claim. While this being the pure civil dispute, certain questions were put to the complainant to recall him just necessary.



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4. This Court, on perusing the impugned order passed by the trial Court in the light of the submissions made by the learned counsel for the petitioner, finds that there is no specific reason stated in the Section 311 Cr.P.C., petition which would satisfy the requirement of law why the witness was not examined adequately when he was present and what prompts the petitioner to recall him. The complainant been in the witness box for cross examination on 16.06.2023, 20.07.2023 and 10.08.2023. The accused has not cross examined the witnesses. Thereafter, the Court has again granted further adjournments on 22.08.2023 and 31.08.2023 stating that it will be the final chance of hearing. Though it was mentioned as final chance, the accused has not come forward to cross examine the witness. At last the Court has adjourned the matter on 12.10.2023 and on that day when the accused has not come forward to cross examine the witness, the Court has closed the examination of complainant side witnesses and posted the matter for questioning the accused under Section 313 Cr.P.C., in respect of incriminating material against the accused. The accused has conveniently absent himself for appearing before the Court inviting issuance of Non Bailable Warrant and later filed petition to recall it. The conduct of the petitioner/accused is



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well demonstrated in the impugned order which makes to confirm the dismissal order and dismiss this petition as devoid of merits.

5. Accordingly this Criminal Original Petition is dismissed. Consequently, the connected Criminal Miscellaneous Petition is also dismissed.

12.06.2024

Index : Yes/No

Neutral Citation : Yes/No

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To

The Court of the Fast Track, Poonamallee, Thiruvallur.

Dr.G.JAYACHANDRAN,J.

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