



Crl.O.P.No.14852 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2024

CORAM

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**

Crl.O.P.No.14852 of 2024

and

Crl.M.P.No.9100 of 2024

D.N.C.Chits Pvt.Ltd.,
Rep.by is Recovery Officer,
Mrs.Uma Ravi

... Petitioner

Vs.

R.Pragadish

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 Criminal Procedure Code, pleaded to set aside the order passed in Crl.M.P.No.723 of 2024 in S.T.C.No.907 of 2021 dated 12.04.2024 on the file of the XIV Small Causes Court, Chennai.

For Petitioner : Mr.N.Umapathi

For Respondent : No appearance

ORDER

This Criminal Original Petition is filed challenging the order passed by the trial Court allowing application under Section 311 Cr.P.C., to recall PW.1 to cross examine him.



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2. The petitioner, who is the complainant, being aggrieved by the order passed by the trial Court has filed this petition to set aside the said order.

3. The learned counsel appearing for the petitioner submits that the cheque bounce case taken on file as S.T.C.No. 907 of 2021 reached finality and posted for arguments by the trial Court. At that stage the respondent under the pretext of settling the matter delayed the process and therefore, filed an application under Section 311 Cr.P.C., to recall PW.1 without any sufficient cause to reopen and recall. The trial Court allowed the application despite recording that the accused is dragging the case, but opportunity been given to establish his defence. Hence the present Criminal Original Petition.

4. Notice to the respondent returned as no such person. Hence the learned counsel who appeared before the trial Court has received and acknowledged. However, there is no representation for the respondent. The impugned order which is challenged before this Court reads as below:-



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“4.The petitioner states that he is the accused in the above STC. Due to high fever he could not be able to present on 03.11.2023. No prejudice will be caused to the respondent hence he has filed this petition to cross the PW1.

5.The respondent states that already so many adjournments were given to the petitioner. The petitioner states that he was ready to settle the issue by one time after 5 months he was not agreed for the settlement. Again he filed this petition to reopen the PW1 evidence. He has not appeared for cross examination they adopted delay tactics hence the PW1 evidence was closed because of continues absent. Hence the case was posted for complaint side further witness which was closed and posted under Section 313 Cr.P.C., questioning.

6.On careful considering the said facts, the petitioner has filed this petition to reopen the PW1 evidence, the respondent states that he is continuously absent and he is dragging the case. It is found that the case was posted for reporting settlement from 14.10.2022. Since the respondent has not come forward for further



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settlement, the complainant has file memo to conduct the case, thereafter the case was posted for PW1 cross. Four adjournments were continuously given, the petitioner has not ready to cross examine the PW1. After completing u/s.313 questioning he has filed this petition to reopen the PW1 evidence. Simply he stated that due to fever, he could not able to cross the PW1. It is clearly seen that the petitioner is dragging the case. However, the opportunity must be given to other side to establish their case, hence in the interest of justice, this petition is allowed on cost Rs.2,000/-."

5. Reading of the impugned order very clearly show that after questioning the accused regarding incriminating evidence as per Section 313 Cr.P.C., on 21.11.2023 and the matter listed for defence witness on several occasions, the petition is filed to recall. The trial Court recording that even affording four opportunities, PW.1 was not examined would clearly finds the said order is perverse. In application for Section 311 Cr.P.C., only specific reason is provided by the petitioner and the Court is of the view that for arriving at just decision, witness has to be recalled. In this case, in the impugned order, there is no such reason assigned by



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the trial Court. Hence the order passed by the trial Court is hereby set aside. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected Criminal Miscellaneous Petition is closed.

23.08.2024

Neutral Citation : Yes/No
rpl

To

The XIV Small Causes Court, Chennai.



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Dr.G.JAYACHANDRAN,J.

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