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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.07.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.OP.No.15630 of 2024

Sheela Devi

... Petitioner

Vs

Kumararaju

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to set aside the order passed by the learned Judicial Magistrate, Fast Track Court, (Magisterial Level) Poonamalee made in Crl.MP.No.2314 of 2024 in STC.No.349 of 2018 on his file dated 12.04.2024 in dismissing the petition filed by the petitioner herein under Section 311 of Cr.P.C.,

For Petitioner : Mr.T. Shanmugam

ORDER

The petitioner herein is the accused in a complaint for the offence under Section 138 of the Negotiable Instruments Act pending since 2018. After examination of witnesses when the matter was posted for arguments, the complainant has taken out an application to recall and introduce two documents that petition was allowed and complainant was



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examined on 28.02.2024 and marked Ex.P6 and Ex.P7. The petitioner herein is the accused has cross examined the witnesses on the same day and closed the examination of recall witness was closed and proceed further. Thereafter on 13.03.2024, application by the petitioner/accused filed to recall PW1 stating that the complainant is the money lender to various persons and the two documents which he has marked before cross examination in detail to establish that he is a money lender. The trial court after considering the reasons stated that for recalling the witness, had found that the petitioner is not deserved to be allowed. Hence, the trial court has dismissed the said application.

2. Learned counsel for the petitioner emphasized that only recently the accused came to know that the complainant is a money lender and nearly 10 cases under Section 138 of the Negotiable Instruments Act been initiated by the complainant and the same are pending. Therefore, to prove that the complainant has no source of income to lend money, he must be recalled.

3. This court is unable to countenance the said arguments since the witness was in the hands of the defence counsel to cross examine and



nothing elucidated in the cross-examination despite witness been questioned about the various other transactions. Further whether the complainant is a registered money lender or un-registered money lender or carrying on another business cannot be a reason for recall him when the witness was already examined twice. The reasons stated for recalling the witness not sufficient. The trial court after citing the Judgment of the SC has held that the twin condition under Section 311 of Cr.P.C., is not satisfied.

4. The learned Magistrate while dismissing the application under Section 311 of Cr.P.C., has relied upon the judgment of the Hon'ble Supreme Court rendered in ***Vinod Kumar Vs. State of Punjab*** reported in ***(2015) 3 SCC 220*** and also the judgment rendered in ***The State Vs. N. Seenivasagan*** ***MANU/TN/3724/2019*** as well as ***Swapan Kumar Chatterjee Vs. CBI*** reported in ***MANU/SC/0170/2019***.

5. Learned counsel for the petitioner submitted that the judgment rendered in ***The State Vs. N. Seenivasagan*** by the High Court is reversed by the Hon'ble Supreme Court in ***The State represented by***



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the Deputy Superintendent of Police Vs. Tr.N. Seenivasagan reported

in Live law 2021 SC 136.

6. The sum and substance of these three judgments including the judgment of the Hon'ble Supreme Court rendered in *The State Vs. N. Seenivasagan* is the application under Section 311 of Cr.P.C., can be entertained only if the recall of witness is necessary for the court to arrive at just decision of the case. In this case, the trial court, while dismissing the petition, has clearly held that recalling of the witness is not necessary to arrive at a just decision.

7. This court, on perusing the impugned order, finds that no ground to interfere under Section 482 of Cr.P.C.,. Therefore, this petition is dismissed.

Index: Yes/No
Speaking /Non-speaking Order
gv

03.07.2024



To

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1. The Judicial Magistrate, Fast Track Court,
(Magisterial Level) Poonamallee
2. The Public Prosecutor,
High Court of Madras,
Chennai.



Dr.G.JAYACHANDRAN,J.



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gv

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