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CrI.O.P.No.15868 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2024

CORAM

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

CrI.O.P.No.15868 of 2024

S.Rajeswari

... Petitioner

Vs.

A.Zafarulla

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleaded to set aside the order dated 20.06.2024 and call for the records comprised in CrI.M.P.No.8267 of 2024 in S.T.C.No.3005 of 2021 made by the learned XXV Metropolitan Magistrate Court, Egmore, Chennai-8.

For Petitioner : Mr.M.Maharaja

ORDER

This Criminal Original Petition is filed under Section 482 Cr.P.C., by the accused to set aside the order passed by the trial Court, which has dismissed the application filed under Section 311 Cr.P.C., to recall herself and examination as PW.1, the Manager of the complainant bank and the Manager of the accused bank, who were shown as witnesses in the complaint and not examined by the complainant. The reason for



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declining the said application been stated by the trial Court in the

impugned order which reads below:-

“5. On perusal of records, it is pertinent to note that on the respondent/complainant side, the complainant was examined as PW.1 on 03.03.2023 itself and due to the petitioner/accused was not turned up for cross examination of PW1, the cross examination of PW1 was closed. After questioned under Section 313(1)(b) of Cr.P.C., the petitioner/Accused himself entered into the witness box as DW1 and deposed his evidence after obtaining permission under Section 315 of Cr.P.C., on 20.09.2023 and he was cross examined by the respondent/complainant on 05.10.2023. Thereafter, the petitioner/Accused filed petition in Crl.M.P.No.52618/2023 to recall the PW1 for cross examination on 20.11.2023 and the same was allowed by this Court on 18.12.2023. In view of the said order, the learned counsel for petitioner/accused has cross examined the PW1 in detail and marked the documents Ex.D1 and Ex.D2 through PW1 at the time of cross examination on 18.12.2023. After giving sufficient opportunities to let in further evidence on Defence side, the petitioner/accused has come forward by way of this petition under Section 311 of Cr.P.C., against to recall the witnesses namely 1) petitioner/accused, 2) Manager of the complainant band and 3) Manager of the accused bank. Admittedly, the petitioner/accused herself entered into the witness box and let in evidence after getting permission under Section 315 of Cr.P.C., and



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she was cross examined by the respondent/complainant in detail. The petitioner/accused has availed the opportunity to let in her defence evidence already hence she cannot be permitted to fill up the lacuna arise at the time of cross examination by the respondent/complainant. Further, there was no further witnesses namely the Managers of both the complainant and accused banks as alleged by the petitioner/accused examined on the side of the respondent/complainant hence she cannot claim the opportunity to cross examine the said witnesses since no evidence adduced by them in the above case.”

2. The trial Court after careful consideration of the submissions and documents, has held that the complainant was given an opportunity to recall PW.1 for further cross examination and same was allowed on 18.12.2023. Accordingly, PW.1 was examined. On his application under Section 315 Cr.P.C., she was permitted to examine as defence witness and thereafter, the matter been adjourned for further proceedings. When both the complainant and the accused has not chosen to examine Managers of both bank, application to recall them does not arise. Precisely the reason why the trial Court has dismissed the petition. Even assuming that the petitioner/accused wants to examine both the Managers, she should file application at the first instance on the defence side evidence. Having failed on that stage, seeking indulgence of the



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Court to summon the bank Managers of the accused and the complainant belatedly does not satisfy the necessity to exercise the power under Section 311 Cr.P.C.. Hence this Court finds no error both in law and facts in the order passed by the Judicial Magistrate, Hence this Criminal Original Petition is dismissed.

05.07.2024

Index : Yes/No

Neutral Citation : Yes/No

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To

The XXV Metropolitan Magistrate Court, Egmore, Chennai-8.

Dr.G.JAYACHANDRAN,J.

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