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Crl.O.P.Nos.19496 and 19514 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P No.19496 and 19514 of 2023
and Crl MP No.13154, 13169 and 13170 of 2024

P.Sathya

...Petitioner

Vs.

S.Bhuvaneswari

...Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to set aside the order dated 20.06.2023 passed in Crl MP No.16165 of 2023 in CC No.6836 of 2016 (***Prayer in Crl OP No.19496 of 2023***) and Crl MP No.16164 of 2023 in CC No.6836 of 2016 (***Prayer in Crl OP No.19514 of 2023***) on the file of learned Metropolitan Magistrate, FTC II, Egmore, at Allikulam, Chennai – 3.

For Petitioner : Mr.Prakash Goklaney
in both Crl OPs

COMMON ORDER

These petitions have been filed challenging the order passed by the Court below dismissing the applications filed in Crl MP No.16165 of



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2023 under Section 311 of Cr.PC and Crl MP No.16164 of 2023, under
Section 91 of Cr.PC.

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2. The petitioner is facing trial for offense under Section 138 of the Negotiable Instruments Act. The respondent / complainant examined himself as PW1. She was cross-examined in part on 21.03.2023. Thereafter, due to paucity of time, the case was adjourned. However, during the next hearing, she was not cross-examined. Hence, the evidence of PW1 was closed. The petitioner therefore filed an application under Section 311 of Cr.PC to recall PW1 for further cross examination.

3. The petitioner also relied upon a statement that was made by the respondent during cross examination that she is in possession of a diary in which she has recorded all the transactions. Hence, the petitioner sought for a direction to the respondent to produce the said diary by filing an application under Section 91 of Cr.PC.



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4. The Court below dismissed both the applications and aggrieved by the same, these Criminal Original petitions have been filed before this Court.

5. Heard Mr.Prakash Goklaney, learned counsel for the petitioner and carefully perused the materials available on record. The respondent has been served with notice and the name of the respondent has also been printed in the cause-list and there is no representation either in person or through counsel.

6. It is seen from records that PW1 was cross examined on 21.03.2023. Thereafter, the petitioner wanted to continue the cross examination and this was not permitted by the Court below on the ground that the calender case is of the year 2016. It is a matter of fact that the examination of PW1 had taken place only in the year 2023. Therefore, there was no delay on the part of the petitioner in seeking for further cross-examination of PW1. The petitioner must be given one opportunity to further cross-examine PW1 in order to establish her defence.



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7. Insofar as the application filed by the petitioner under Section 91 of Cr.PC, the respondent has taken a stand in the counter to the effect that she had stated during cross examination that the note book is available but however she was not able to trace the same later. In the light of the stand taken by the respondent, no useful purpose will be served in insisting for the respondent to produce the note book. It is always left open to the petitioner to take the ground of adverse inference against the respondent by relying upon Section 114(g) of the Indian Evidence Act. Hence, it is not necessary for this Court to once again revive Section 91 application that was filed by the petitioner.

8. In the light of the above discussion, the order passed by the Court below in Crl MP No.16165 of 2023, is hereby set-aside. The Court below shall recall PW1 and on the date of her appearance the further cross examination shall be completed on the side of the petitioner. If for any reason, the cross-examination is not done on the side of the petitioner on the date of appearance of PW1, the petitioner will lose her right to recall PW1 in future.



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9. These Criminal Original Petitions are disposed of in the above terms and the Court below is directed to complete the proceedings within a period of three months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed.

15.02.2024

Index : Yes/No
Internet : Yes/No
Speaking Order : Yes/No
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To

1.The learned Metropolitan Magistrate, FTC II, Egmore, at Allikulam,
Chennai - 3

2.The Public Prosecutor,
High Court, Madras.



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