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Crl.OP.No.20263 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Original Petition No.20263 of 2024

Pramod Ranjan

Director, Coromandel Beach Properties Pvt. Ltd.,
Sivamegan Towers, 3rd Floor,
New No.211, Old No.142,
Vallivarkottam High Road, Nungambakkam,
Chennai 600 034.

... Petitioner

Vs.

Fareed Khan,

C/o. Whitesands Freight Private Ltd.,
“Neonaz Beach Villa” Airport Road,
Southern End, Kavaratti,
Lakshadweep 682 555

Also at:

C/o. Whitesands Freight Private Ltd.,
Jain Housing, Kallur Kathrikadavu Road,
Ernakulam 682 017.

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, praying to call for records of the XXV Metropolitan Magistrate, Egmore pertaining to its order dated 23rd July 2024 passed in Crl MP No.23924 of 2024 in C.C.No.7182 of 2019, set aside the same.



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For Petitioner : Mr.Gaurav Chatterjee

ORDER

The petition has been filed by the complainant having aggrieved by the order of the learned Judicial Magistrate, who has allowed the application filed under Section 311 of Cr.P.C. to recall P.W.1, when the matter was posted for judgment.

2. When P.W.1 in this case was examined in chief on 04.08.2023 and 06.09.2023, the accused has not cross-examined the witness and after questioning him under 313(1) (b) of Cr.P.C. on 18.10.2023, the case was adjourned for more than four occasions. The accused was absent and bailable warrant was issued against him. The accused surrendered on 09.12.2023, and got the warrant recalled, in such circumstances when the matter was posted on 11.03.2024 for argument and after hearing the arguments of the learned counsels, posted for judgment on 25.04.2024. On the said date of judgment, the present



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petition to recall under Section 311 of Cr.P.C. was filed and the same has been entertained by the Trial Court. Being aggrieved by the said order, the present criminal original petition is filed.

3. On a perusal of the impugned order passed by the learned Judicial Magistrate, this Court finds that the Trial Court recording the failure of the accused to cross-examine the witness in spite of affording opportunity had took a lenient view that the accused in a complaint under Section 138 of the Negotiable Instrument Act, as a reverse burden to prove his innocence and therefore, opportunity to cross-examine the complainant to be granted.

4. The reason stated to allow the petition under Section 311 of Cr.P.C., is contrary to the dictum laid down by the Hon'ble Supreme Court in *Vinod Kumar Vs. State of Punjab*, reported in *CDJ 2015 SC 115*. Therefore, this Court finds that when there is no sufficient cause explained by the respondent accused for why he did not cross-examine the witness when he was present on 04.08.2023 and 06.09.2023 and waited till the matter reached the stage of pronouncing judgment. In such circumstances, the application filed to recall ought to have been



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dismissed, unfortunately the Trial Court has allowed the application which is without any reason.

5. Hence the Criminal Original Petition is allowed and the order passed by the Trial Court in Crl. MP No.23924 of 2024 dated 23.07.2024 hereby set aside.

05.09.2024

jv

Index: Yes/No

Internet: Yes/No

To

1. The XXV Metropolitan Magistrate,
Egmore.



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Dr.G.JAYACHANDRAN,J.

jv

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