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Crl.O.P.No.22322 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2024

CORAM

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

Crl.O.P.No.22322 of 2024

and

Crl.M.P.No.12727 of 2024

B.Balasenthil

... Petitioner

Vs.

Mythili

Proprietor

M/s.Mythili Traders

... Respondent

**Prayer:** Criminal Original Petition is filed under Section 528 BNSS, pleaded to set aside the order passed by the Honble Fast Track Court Magistrate, Alandur in Crl.M.P.No.47 of 2024 dated 25.03.2024 in C.C.No.120/2021 and to direct the Honble Fast Track Court Magistrate, Alandur to allow the PW1 to mark the order dated 01.04.2023, Deposition of accused, Statement of accused in C.C.No.36984/2021 on the records of XXV Additional CMM Bangalore.

For Petitioner : Mr.S.Karthiravan

### **ORDER**

The petitioner herein is the complainant in a proceedings initiated under Section 138 of Negotiable Instruments Act. After examination of



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witnesses and on completion of Section 313 proceedings, he has taken out an application to reopen and recall for marking certain documents.

Those documents are related to Section 138 proceedings initiated against the accused in Court at Bangalore in which the PW.2 was the complainant. The trial Court after considering the facts has partly allowed the application permitting the complainant to mark the judgment rendered in the case in C.C.No.36984 of 2021 passed by the Additional Chief Metropolitan Magistrate, Bangalore on 01.04.2023. However, the deposition in the said case declined to be accepted citing Section 33 of the Indian Evidence Act.

2. Being aggrieved by the fact that the deposition of the witnesses are also relevant and cannot be declined to be accepted citing Section 33 of Indian Evidence Act, the learned counsel for the petitioner submits that the deposition of the witnesses is very much relevant and necessary to prove bad conduct of the accused. The learned counsel also rely upon the judgment of the Kerala High Court rendered in ***Jose Valiyaveedan Vs. Giri K.George***, wherein, the Hon'ble Kerala High Court relying upon Section 80 of Evidence Act, has permitted marking of



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certified copy of the deposition given by the defendant in another judicial proceedings without examining deponent / defendant.

3. Heard the learned counsel appearing for the petitioner.

4. The perusal of the record and the impugned order clearly indicate that the petitioner who is the complainant had examined PW.2 in support of his case. The said PW.2 is the complainant as against the same accused and his complaint been tried at Court in Bangalore. The endeavour of the petitioner is to mark the judgment copy as well as the deposition copy and the answers given by the accused in the Section 313 Cr.P.C.,

5. According to the petitioner, the deposition and answer to the Section 313 Cr.P.C., questions in the other proceedings is relevant to the proceeding under consideration. It is necessary for the Court to make it clear that in 138 proceedings the previous conduct of the accused is immaterial. There cannot be evidence allowed to let in to prove the bad conduct of the accused and there is a specific bar under the Evidence Act. That apart the judgment of the Kerala High Court relied by the



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counsel is pertaining to a civil dispute wherein the signature of the witness has also been required to be compared and tested and hence with the aid of Section 80 of Evidence Act, the Kerala High Court has allowed partly to mark certified copy of the deposition of the defendant without examining the defendant. In this case, specifically the issue is whether the subject cheque was issued to the petitioner/complainant for an enforceable debt. To prove the said fact in issue what all said by the accused or other witnesses in a different proceedings cannot be a relevant fact for the case in hand which has to be independently proved. Section 33 of Evidence Act been relied by the trial Court for disallowing part of the application. The said Section 33 of Indian Evidence Act reads as below:-

***“33.Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated:-*** Evidence given by a witness in a judicial proceeding, or before any person authorised by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving



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*evidence, or is kept out of the way by the adverse party, of if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable:*

*provided-*

*that the proceeding was between the same parties or their representatives in interest;*

*that the adverse party in the first proceeding has the right and opportunity to cross-examine;*

*that the questions in issue were substantially the same in the first as in the second proceeding.”*

6. This provision enables the Court to accept evidence given by the witness in a different judicial proceedings, if same is necessary in a subsequent judicial proceedings without examining the witness if the witness is found dead or not heard. In the said context, the learned counsel for the petitioner want to take advantage of Section 80 of Evidence Act, which only speak about the presumption of genuineness of a document which form part of Court record as memorandum of



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evidence. The core issue is whether the proceedings initiated by PW.2 against the accused in this case before the Bangalore Court has any relevancy in a case to admit the testimony of the witness in the other case as an evidence in the present case.

7. This Court finds that those documents are totally irrelevant, even the accused or any other witness are said anything which may not be in support or against the case of the petitioner which is under trial before Judicial Magistrate, Alandur. The petitioner who is the complainant under Section 138 of N.I.Act, has to stand or fall on his own case by letting evidence and also taking advantage of the statutory presumption of N.I.Act. The statements made in any other proceedings is of no relevancy dehors of Section 33 of Indian Evidence Act as well as Section 80 of Evidence Act. The attempt of the petitioner herein to mark documents which are not relevant has to be curtailed. The trial Court, though has allowed marking of judgment in other proceedings, has rightly rejected the attempt of the petitioner to mark certificate copy of the deposition and answers given under Section 313 Cr.P.C., Therefore, this Court finds no merit. Hence this Criminal Original Petition stands



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dismissed. Consequently, the connected Criminal Miscellaneous Petition

is closed.

**11.09.2024**

Index : Yes/No

Neutral Citation : Yes/No

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To

The Fast Track Court Magistrate, Alandur



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**Dr.G.JAYACHANDRAN,J.**

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