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CrI.O.P.No.23668 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2024

CORAM

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

CrI.O.P.No.23668 of 2024

and

CrI.M.P.No.13388 of 2024

R.Mohamed Rafeek

... Petitioner

Vs.

N.Prabhakaran

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C./ 528 BNSS, pleaded to set aside the order dated 11.09.2024 made in CrI.M.P.No.2356 of 2024 in S.T.C.No.363 of 2022 in the file of the XVI Small Causes Court, Chennai.

For Petitioner : Mr.M.Guruprasad for
Mr.T.Nalinidhar

ORDER

The petitioner herein is an accused in a complaint initiated under Section 138 of Negotiable Instruments Act.

2. In the course of trial, earlier he has filed two applications, one under Section 311 Cr.P.C., and another under Section 91 Cr.P.C.,



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Section 311 Cr.P.C., application was filed to recall PW.1 and Section 91

Cr.P.C., application was filed to produce Book of Accounts, Income Tax Returns filed by the complainant between 2019 to 2022, Voucher Books maintained by him for the relevant period, so as to ascertain the factual truth.

3. These applications were considered by the Court below and partly allowed vide order dated 25.09.2023, recorded the undertaking given by the complainant to produce the ledger or any other transaction, held that the complainant need not produce the IT returns. When the witness [PW.1] was ready to subject himself for cross examination and produce the documents namely the ledger account or any other NEFT details, the accused has consciously taken a decision and made endorsement through his counsel that no further cross without IT papers required. Accordingly, the application was disposed of on 19.01.2023. Thereafter, the present application is filed under Section 311 Cr.P.C., for recall of PW.1. The Court below on considering the facts on the earlier endorsement has passed the following order :-

*“Heard. Records perused. This Court
had already passed order dated 19.01.2023 in*



CrI.M.P. No.566 of 2023 that the accused side failed to establish as to how the documents that were produced by the documents that accused wanted the documents for and subsequently dismissed the petition. The counsel for the accused then endorsed that there is no further cross-examination without IT Papers and the case was proceeded with. The order dated 19.01.2023 remains unchallenged. While so, the case cannot be reopened at this stage of arguments by quoting that cross-examination could not be completed by the earlier counsel as certain documents were not produced. Hence petition dismissed. No costs.”

The said order is now under challenged by the accused under Section 482 Cr.P.C..

4. The learned counsel appearing for the petitioner submits that the endorsement made by the prior counsel shall not stand in the right of the petitioner/accused to recall the witness and examining him on certain points. He would further submit that the cross examination of PW.1 was not completed earlier, in view of the application filed under Sections 311



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& 91 Cr.P.C. Therefore, the right of the accused to cross examine the complainant in detail has to be restored.

5. This Court, on perusing the documents and the impugned order passed by the trial Court, finds that the opportunity to recall PW.1 granted by the court, but not availed by the accused and he has made a specific endorsement further cross of PW.1 not required. After making endorsement that, in spite of order of the Court, he was not inclined for further cross of PW.1, after 8 months, by changing the counsel he cannot revive his petition to recall, which will tantamount to harassing the complainant. Hence, this Court finds no merit in this petition.

6. In the result, this Criminal Original Petition is dismissed. Consequently, the connected Criminal Miscellaneous Petition is closed.

26.09.2024

Index : Yes/No

Neutral Citation : Yes/No

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To



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The XVI Small Causes Court, Chennai.

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Dr.G.JAYACHANDRAN,J.



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