



Crl.O.P.No.26796 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.26796 of 2024

and

Crl.M.P.No.14929 of 2024

M/s. J and J Traders
Rep by. Its proprietor
Benit Karan

... Petitioner

-VS-

M/s. VC Appliances Pvt, Ltd.
Having Corporate Office at,
No.56, New Avadi Road,
Kilpauk, Chennai - 600 010.
Rep. by. its. Accounts manager/ Power of Attorney
Srinivasan

... Respondent

Prayer: Criminal Original Petition is filed under Section 528 BNSS, pleaded to call for the records relating to Crl.M.P.No.56559 of 2024 in C.C.No.5096 of 2018 pending on the file of the learned XXVI Metropolitan Magistrate, Egmore, Chennai and set aside the same.

For Petitioner : Ms.D.Jayapriya

ORDER

The petitioner herein is an accused in a private complaint instituted under Section 138 of Negotiable Instruments Act, in C.C.No.5096 of 2018. After



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completion of examining the defence witnesses, he has filed application to recall DW.1 to mark certain documents.

2. The learned Judicial Magistrate, after hearing both sides, had dismissed the application filed under Section 311 Cr.P.C., on the ground that the documents sought to be introduced, were in the possession of the petitioner even at the time of examining the complainant. While so, the attempt for introduction of the documents belatedly which is admittedly in his possession, is without any satisfactory reason.

3. The learned counsel appearing for the petitioner submits that the case of the petitioner/accused is that he had issued notice to the complainant even before causing statutory notice. The said reply of the accused produced by the complainant is forged documents and therefore, clear copy of the original notice is need to be marked. However, the trial Court had declined to entertain the petition erroneously, which has caused grave prejudice to the petitioner/accused.

4. The perusal of the application filed under Section 311 Cr.P.C., reveals that during cross examination of the petitioner, specific question been put by the complainant that whether there is any documents to show that the



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cheque was issued only for security purpose and not for discharge of liability.

For which, the petitioner had answered in affirmative and had deposed that he is having the document in his possession and ready to mark it to establish the fact that the cheque was issued for security purpose. To other question regarding reply to the statutory notice, the petitioner had deposed that even before receipt of the statutory notice, he issued notice to the complainant. Further, the averment made in the petition to recall is that the photographs of the accused company marked during cross examination need to be controverted by producing clear photograph of his company.

5. The perusal of the records indicates that DW.1 was cross examined on 13.08.2024 and certain documents were marked by the complainant in the course of cross examination of DW.1. The complaint given against the petitioner is regarding issuance of cheque without sufficient fund. The transaction appears to be regarding sale of goods by the complainant to the accused, who was running the business in the name and style of M/s.Benit & Co Electronic Private Limited. The defence taken by the accused is that there is no firm by name M/s.Benit & Co and further, the subject cheques were issued only as security and not for discharge of any enforceable debt. In this connection, during the cross examination of the accused, two questions were put to him, one



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regarding the notice denying the liability and another regarding the existence of

the company M/s.Benit & Co.

6. In the said circumstances, the photographs and Google details been shown to the accused during cross examination and confronted. As far as the question regarding reply to the statutory notice, the petitioner/accused had deposed that even prior to receipt of statutory notice, he has caused notice to the complainant. If it is so, as pointed out by the learned counsel for the complainant, the said documents ought to have been placed by the accused at the earlier point of time and not after completion of cross examination. A new fact introduced by him in the cross examination is now attempted to be magnified through the documents which never seen the light of the day for the past 6 years.

7. In so far as the request for introducing clear photographs to contradict the content of the Ex.P.15, this Court finds that during the cross examination the petitioner/accused has admitted that the photographs found at page No.3 of Ex.P.15 is his photograph and in the said photograph the name M/s.Benit & Co is displayed in the background.



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8. In the said circumstances, it is futile attempt to introduce document

which never whispered for more than 6 years and to make a claim that there is no company by name M/s.Benit & Co. Hence this Court finds no reason to interfere the order of the Magistrate, which has dismissed the application of the petitioner filed under Section 311 of Cr.P.C by assigning acceptable reasons.

9. Accordingly, this *Criminal Original Petition is dismissed.*

Consequently, the connected Criminal Miscellaneous Petition is closed.

28.10.2024

Index :Yes/No.

Neutral Citation :Yes/No.

rpl

To,

The XXVI Metropolitan Magistrate, Egmore, Chennai.

Dr.G.JAYACHANDRAN,J.



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