



Crl.O.P.No.27103 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.11.2024

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.O.P.No.27103 of 2024

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R.Arumugam

.. Petitioner/Complainant

Vs.

Dr.G.Ramamoorthy

.. Respondent/accused

Criminal Original Petition filed under Section 482 Cr.P.C. read with Section 528 of the BNSS, praying to call for the records pertaining to the order dated 14.10.2024 in Crl.M.P.No.47530 of 2024 in S.T.C.No.2425 of 2023 passed by the Metropolitan Magistrate, Fast Track Court-II, Egmore @ Allikulam and set aside the same as illegal and dismiss the Crl.M.P.No.47530 of 2024.

For petitioner : M/s.P.Vasanthakumar Visveswaran

For respondent: Mr.V.Ramana Reddy

ORDER

This Criminal Original Petition is filed to call for the records pertaining to the order dated 14.10.2024 in Crl.M.P.No.47530 of 2024 in S.T.C.No.2425 of 2023 passed by the Metropolitan Magistrate, Fast

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Track Court-II, Egmore @ Allikulam and set aside the same.

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2. Learned counsel for the petitioner submitted that the respondent/accused, was already given an opportunity to cross-examine and due to change of counsel, the petitioner/complainant had filed a petition under Section 311 of Cr.P.C. to recall P.W.1 for further cross-examination.

3. Learned counsel for the petitioner also submitted that already, sufficient opportunity had been given to the petitioner/complainant, and despite giving an opportunity, at the time of arguments, they have filed the present petition before the Court below after the defence is taken and to examine the defence witness. If the same is allowed, the petitioner would get prejudiced and also that, whatever the admission by the petitioner would be defeated by way of further cross-examination. Therefore, the learned counsel for the petitioner placed reliance on the relevant Sections of the Cr.P.C./The Negotiable Instruments Act. In support of all his contentions, learned counsel for the petitioner-complainant placed reliance on the order of this Court, dated 23.08.2024 passed in CrI.O.P.No.14852 of 2024 (D.N.C.Chits Pvt. Ltd.,Vs. R.Pragadish) and

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also the order of the Honourable Supreme Court in Petition(s) for Special Leave to Appeal (CrI) in No.3910 of 2024 (arising out of judgment of the Gauhati High Court, dated 19.01.2024 in CRLP.No.561 of 2021), dated 02.09.2024 (Neha Begum and others Vs. The State of Assam and another).

4. On the other hand, learned counsel appearing for the respondent/accused submitted that the previous counsel did not conduct the case properly and that also, the counsel colluded and hence, the petitioner could not conduct the case properly.

5. The above two decisions relied on by the learned counsel for the petitioner, are distinguishable on facts and are not applicable to the present case on hand. Those decisions deal with the Police report, whereas, the facts of the present case on hand is otherwise than Police report and which is private complaint under Section 138 of the Negotiable Instruments Act.

6. Heard both sides and perused the materials available on record.

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7. The respondent herein filed a petition under Section 311 Cr.P.C. in S.T.C.No.2425 of 2023. Both the parties have been examined before the Court below. The evidence was over and at the stage of arguments, the respondent/accused filed now a petition under Section 311 Cr.P.C. and the learned Magistrate had considered the grievance of the petitioner, since the petition under Section 311 Cr.P.C. can be filed only before the pronouncement of the judgment at that stage and the present case on hand is only under Section 138 of the Negotiable Instruments Act. It is for the de-facto complainant (petitioner herein) to prove his case and therefore, in the above factual situation, some mistake had crept in, having been the mistake being committed by the counsel and for the mistake committed by the counsel, the parties should not suffer and therefore, in the above circumstances, this Court does not find any reason to interfere with the impugned order passed by the learned Magistrate.

8. Hence, this petition is dismissed, with liberty to the petitioner-Complainant to take all their defence submissions at the time of trial/arguments.

9. At this juncture, it is stated across the Bar that the case is

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listed for hearing before the trial Court on 24.12.2024. Hence, the trial Court is directed to advance the hearing of the main case itself.

The petitioner/complainant is directed to examine the witness(es) on that day, i.e. on 24.12.2024 itself and the trial Court is directed to advance the hearing of the case to 04.12.2024 and both the parties are directed to extend their fullest co-operation to complete the examination of the recall witnesses, on 04.12.2024 itself, after which, the trial Court is directed to dispose of the main case itself, on or before 18.12.2024.

10. With the above observations and directions, this CrI.O.P. is dismissed.

25.11.2024

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To
The Metropolitan Magistrate, Fast Track Court No.II,
Egmore @ Allikulam, Chennai.

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