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Crl.O.P.No.28385 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2024

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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.O.P.No.28385 of 2024

and

Crl.M.P.No.15791 of 2024

R.Kumar

... Petitioner

Vs.

K.N.Gunasekaran

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., r/w Section 528 BNSS Act, 2023, to call for the records pertaining to the order dated 14.10.2024 in petitioner's memo dated 14.10.2024 in C.C.No.1441 of 2018 passed by the learned III Metropolitan Magistrate at George Town, Chennai and set aside the same.

For Petitioner : Mr. R.Arumugam

ORDER

Challenging the order dated 14.10.2024 in C.C.No.1441 of 2018 on the file of the III Metropolitan Magistrate Court, George Town, Chennai, the present petition is filed.



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2. Learned counsel for the petitioner submitted that the petitioner/complainant filed a case in C.C.No.1441 of 2018 on the file of the III Metropolitan Magistrate Court, George Town, Chennai against the respondent/accused under Section 138 of Negotiable Instruments Act, 1881. During trial, the respondent/accused was examined as D.W.1 and he was cross examined in part and the case was adjourned for continuation of cross examination of D.W.1. While that being so, the respondent/accused filed an application in Crl.M.P.No.7730 of 2024 to recall the evidence of P.W.1 and the same was dismissed, vide order dated 23.09.2024 and the said calendar case was adjourned to 08.10.2024 for continuation of cross examination of D.W.1. When the case was taken up for hearing on 08.10.2024, the cross examination of D.W.1 could not be done due to absence of respondent/accused (D.W.1) and the learned Magistrate closed the continuation of cross examination of D.W.1 and adjourned the matter for arguments. Hence, the petitioner/complainant filed a memo dated 14.10.2024 to eschew the evidence of D.W.1. However the learned Magistrate failed to note the fact that the petitioner/complainant is deprived of his right to continuation of cross examination of D.W.1, without any fault on his part, which would



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prejudice the case of the complainant and dismissed the said memo.

Aggrieved by the same, the present petition is filed.

3. It is seen from the records that, after completion of petitioner's side evidence, the respondent-accused was examined as D.W.1 and he was cross examined in part and the case was posted for continuation of cross examination of D.W.1. However, due to non co-operation of the respondent/accused, the cross examination was not over and the learned Magistrate closed the cross examination of D.W.1. Immediately, he rushed to the learned Magistrate and filed a memo dated 14.10.2024 seeking to eschew the evidence of D.W.1. Considering the above facts, the learned Magistrate has closed the evidence of defence and posted the case for arguments. It is fault on the part of the petitioner to state that when once the witness appeared for cross examination, for the reasons best known to the petitioner, ought to have completed the cross on the same day itself, without doing so, later he cannot ask the Court by filing a memo to eschew the evidence of D.W.1 as a matter of right.

4. It is settled proposition of law that, when once trial started, the witnesses have to be examined on a day-to-day basis and examinations of



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the witnesses had to be completed.

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5. On a perusal of the records and also considering the facts and circumstances, this Court does not find any merit in this petition, therefore, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

6. However, the petitioner is at liberty to take all his defence before the learned Magistrate during arguments.

13.11.2024

Index: Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

ms

To

The III Metropolitan Magistrate,
George Town, Chennai



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P.VELMURUGAN, J

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