



WEB COPY



Crl.O.P.No.28333 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.O.P.No.28333 of 2024

and

Crl.M.P.No.15779 of 2024

Gowrishankar Sripriya @ C.G.Sri Priya

... Petitioner

Vs.

A.Shanmugasundaram

... Respondent

Prayer: Criminal Original Petition is filed under Section 438 BNSS Act, 2023, to call for the entire records relating to the order dated 17.10.2024 in Crl.M.P.No.4736 of 2024 in C.C.No.347 of 2017 passed by the learned Judicial Magistrate, Fast Track Court No.1 at Magisterial Level, Coimbatore and set aside the same.

For Petitioner : Mr.S.Saravanan

ORDER

This Criminal Original Petition is filed to call for the entire records relating to the order dated 17.10.2024 in Crl.M.P.No.4736 of 2024 in C.C.No.347 of 2017 passed by the learned Judicial Magistrate, Fast Track Court No.1 at Magisterial Level, Coimbatore and set aside the same.



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2. The respondent/complainant filed a complaint against the petitioner/accused under Section 138 of Negotiable Instruments Act and Section 200 Cr.P.C. in C.C.No.347 of 2017 on the file of the Judicial Magistrate Court No.I, Coimbatore. During trial, at the time of cross examination of D.W.1, when the counsel for the respondent/ complainant did not appear, the learned Magistrate closed the cross examination of D.W1 and posted the case for final arguments. Thereafter, the respondent/complainant filed a petition under Section 311 Cr.P.C to recall D.W.1 for cross examination in CrI.M.P.No.4736 of 2024 in C.C.No.347 of 2017 on the file of the Judicial Magistrate, Fast Track Court No.I at Magisterial Level, Coimbatore and the same was allowed on condition that D.W.1/accused shall be cross examined in full on the same day of her next appearance and the petitioner/complainant shall pay the costs of Rs.3,000/- to D.W.1. Aggrieved by the said order, the petitioner has filed the present petition.

3. Learned counsel for the petitioner/accused stated that the respondent/complainant, suppressed the fact that on the date of cross examination of D.W.1, the accused/D.W.1 was present and at the request of the complainant's counsel, the case was passed over for cross



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examination of D.W.1, and since the complainant was not ready to cross examine the witness, the learned Magistrate closed the cross examination of D.W.1 and posted for arguments. He further submitted that four months after closure of D.W.1's cross examination, the respondent/complainant filed the petition under Section 311 Cr.P.C to recall D.W.1 for cross examination. The learned Magistrate failed to consider those facts and allowed the petition.

4. On a perusal of the records and also the order of the Court below, it is seen that, in order to give an opportunity to the respondent/complainant, the learned Magistrate allowed the petition and this Court does not find any perversity or infirmity in the order of the Court below, but however, in the interest of justice, the respondent/complaint has to be given an opportunity to cross examine D.W.1, and therefore, this petition is dismissed.

5. However, the petitioner/accused is directed to appear before the learned Magistrate concerned on 21.11.2024 and on her appearance, the respondent/complainant is directed to cross examine. The learned Magistrate is directed to allow the respondent/complainant to cross



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examine D.W.1 on 21.11.2024 itself. If the respondent failed to cross examine D.W.1, the learned Magistrate is directed to hear the arguments of both sides and dispose of the complaint on merits and in accordance with law on or before 29.11.2024.

6. With the above observations and directions, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

13.11.2024

Index: Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No
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To

1. The Judicial Magistrate,
Fast Track Court No.1 at Magisterial Level,
Coimbatore.



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P.VELMURUGAN, J

ms

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