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Crl.O.P.No.28316 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.28316 of 2023

And

Crl.M.P.No.19670 of 2023

R.Senthil Kumar

... Petitioner

Vs.

T.S.Vasan

... Respondent

Prayer:

Petition filed under Section 482 of Cr.P.C., seeking to call for the records pertaining to the proceedings in C.C.No.819 of 2013 on the file of the Hon'ble III Metropolitan Magistrate, George Town, Chennai and set aside the order dated 16.10.2023 passed in Crl.M.P.No.7711 of 2023 in C.C.No.819 of 2013, on the file of the learned Hon'ble III Metropolitan Magistrate, George Town, Chennai.

For Petitioner : M/s.R.Amizhdhu

For Respondent : Mr.N.Venkateswaran

ORDER

This petition has been filed challenging the order passed by the Court below in Crl.M.P.No.7711 of 2023 dated 16.10.2023, allowing the application filed by the respondent under Section 311 of Cr.P.C. to recall D.W.2 for further cross examination.



Crl.O.P.No.28316 of 2023

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2. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent.

3. The respondent filed a complaint against the petitioner for the offence under Section 138 of the Negotiable Instruments Act. The examination of the witnesses on the side of the respondent was completed and the case was at the stage of examination of defence witnesses. The petitioner examined one Mr. Lakshminarayanan as D.W.2. The examination and the cross examination was completed on 22.09.2023. The said witness also signed in the deposition.

4. The respondent filed an application before the Court below under Section 311 of Cr.P.C. for reopening and to recall D.W.2 for further cross examination on the ground that D.W.2 by mistake had mentioned the area where the residence of the respondent was situated as Alwarthirunagar instead of Nammalwarpet. Therefore, the respondent wanted to get this clarification by recalling D.W.2.

5. The Court below on considering the rival claims, came to a conclusion that recalling D.W.2 to clarify an ambiguity, will not



Crl.O.P.No.28316 of 2023

amount to filling up the lacuna and that the ends of justice will be met only if the application is allowed and in such an event, the petitioner will also get a chance to cross examine D.W.2 with respect to the clarification given by D.W.2. Aggrieved by the same, the present petition has been filed before this Court.

6.In the considered view of this Court, the short issue that arises for consideration is as to whether such an application could have been filed by the respondent to get clarification from D.W.2.

7.It must be borne in mind that D.W.2 while in the witness box has stated as if the area where the residence of the respondent is situated is Alwarthirunagar. If such a mistake had been committed by the witness and he wanted to rectify the same, he should have informed the Judge that such a mistake had crept in and based on the same, the learned Trial Judge should have taken a decision. The witness (D.W.2) has signed the deposition. Thereafter, the respondent filed an application on the ground that D.W.2 informed him that he had committed a mistake in mentioning the name of the area and on that ground the respondent has filed an application under Section 311 of Cr.P.C. The conversation between the respondent and



Crl.O.P.No.28316 of 2023

D.W.2 can never be a ground for filing an application under Section 311 of Cr.P.C. to recall D.W.2 for getting some clarification. It is D.W.2 who has deposed before the Court and it is for this witness to inform the Court that there was a mistake while naming the area where the residence of the respondent is situated. If this witness does not choose to inform the same before the Court, the respondent cannot step into the shoes of D.W.2 and file an application for recalling D.W.2 for clarification. This procedure that was adopted by the respondent is un-known to law.

8.Ultimately, the Court below has to read the entire evidence and come to the conclusion. The appreciation of evidence will involve taking into consideration the entire facts of the case and also the evidence of all the witnesses. Therefore, the Courts are not generally swayed by mere mentioning of the area and the deposition will be considered as a whole by the Trial Court.

9.The order passed by the Court below for recalling D.W.2 for further examination by relying upon the judgment of the Apex Court which was based on different set of facts is clearly un-sustainable. In support of his submissions, the learned counsel for the respondent



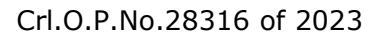
Crl.O.P.No.28316 of 2023

relied upon the decision of the Hon'ble Apex Court reported in 1999

(3) SCC 818 [Rajendra Prasad Vs. Narcotic Cell through its Officer Incharge]. The judgment that was relied by the learned counsel for the respondent has no relevance to the facts of this case. The correction or clarification in the deposition of witnesses can be done only on the request made by the witness and it cannot be done by party to the proceedings. This fundamental factor was not considered by the Court below.

10.As stated supra, the Trial Court has all the power to consider the entire case and appreciate the evidence of the witnesses as well and come to a conclusion. That apart, it is also left open to both the parties to put forth their arguments before the Trial Court. This will sufficiently take care of the rights of both the parties.

11.In the light of the above discussions, the order passed by the Court below in Crl.M.P.No.7711 of 2023 in C.C.No.819 of 2013 dated 16.10.2023 is hereby set aside and this criminal original petition is allowed. There shall be a direction to the Court below to complete the proceedings in C.C.No.819 of 2013 within a period of three months from the date of receipt of a copy of this order.



12. This criminal original petition is allowed. Consequently, the connected miscellaneous petition is closed.

Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

1. The III Metropolitan Magistrate,
George Town,
Chennai.
2. The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

Crl.O.P.No.28316 of 2023
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