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Crl.O.P.(MD)No.8471 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.02.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

Crl.O.P.(MD) No.8471 of 2022
and Crl.M.P(MD).No.5741 of 2022

Sharmila Banu

... Petitioner

Vs.

Marimuthu

...Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to the order dated 22.04.2022 made in Cr.M.P.No.1474 of 2021 in S.T.C.No.176 of 2019 on the file of the District Munsif cum Judicial Magistrate, Rameswaram and set aside the same as illegal.

For petitioner

: Mr.Ajmal Khan
Senior Counsel for
Mr.J.Sulthan Basha

For Respondent

: Mr.M.Kannan



ORDER

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This Criminal Original Petition has been filed to call for the records relating to the order dated 22.04.2022 passed in Cr.M.P.No.1474 of 2021 in S.T.C.No.176 of 2019 on the file of the District Munsif cum Judicial Magistrate, Rameswaram and set aside the same.

2. The learned Senior Counsel appearing for the petitioner would submit that the respondent/complainant has filed a private complaint under Section 138 r/w Section 141 of Negotiable Instruments Act against the petitioner before the learned District Munsif cum Judicial Magistrate, Rameswaram and the trial Court conducted trial and examined all the relevant witnesses and documents and the case was reserved for orders. While so, the respondent/complainant, in order to fill up the lacuna, had filed a petition under Section 311 Cr.P.C to recall him (P.W.1) for elucidating some facts and the trial Court allowed the petition filed by the respondent/complainant, without considering the written submission filed by the petitioner. The learned Senior counsel appearing for the petitioner further submits that the averment contained in the petition filed by the respondent/complainant is absolutely vague and vexatious.

Aggrieved by the same, this Petition has been filed.



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3. The learned counsel appearing for the respondent/complainant submits that this Criminal Original Petition filed by the petitioner is totally misconceived and the respondent/complainant is entitled to recall the witness and there is no prejudice caused to the petitioner. Accordingly, he prays for the dismissal of this petition.

4. It appears that the respondent/complainant has filed a private complaint under Section 138 r/w Section 141 of Negotiable Instruments Act against the petitioner before the learned District Munsif cum Judicial Magistrate, Rameswaram, and after conducting trial and examining all the witnesses, the trial Court reserved the case for orders. Thereafter, the respondent/complainant has filed a petition under Section 311 Cr.P.C to recall him and the same was allowed, against which, this Petition has been filed. The apprehension of the petitioner is that the respondent/complainant will introduce a new theory. However, the apprehension of the petitioner is unwarranted, since the petitioner is entitled to cross-examine the complainant and there is no prejudice caused to him and therefore, the prayer sought for in this Criminal Original Petition cannot be granted. However, this Court directs the respondent to appear before the learned District Munsif cum Judicial



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Magistrate, Rameswaram on **21.02.2024** and on that day, the petitioner is directed to cross-examine the respondent/complainant. Thereafter, the learned District Munsif cum Judicial Magistrate, Rameswaram, may decide the issue in the manner known to law.

5. Accordingly, this Criminal Original Petition is disposed of.
Connected miscellaneous petition is closed.

08.02.2024

Index : Yes/No
Internet : Yes/No
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To

The District Munsif cum Judicial Magistrate, Rameswaram.



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M.DHANDAPANI. J.

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