



CrI.O.P.(MD)No.9392 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 04.09.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

CrI.O.P.(MD)No.9392 of 2024

and

CrI.M.P(MD)No.6418 of 2024

Saravanan

: Petitioner

Vs.

Nazeer Ahamed

: Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the order, dated 21.02.2024 made in Cr.M.P.No.26695 of 2023 in C.C.No.363 of 2018 on the file of the learned Judicial Magistrate Court No.II, Trichy and to set aside the same as unsustainable.

For Petitioner : Mr.S.Vidhya Sagar

For Respondent : Mr.R.Ilayaraja

ORDER

This Criminal Original Petition is directed against the order, dated 21.02.2024 made in Cr.M.P.No.26695 of 2023 in C.C.No.363 of 2018 on the



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file of the learned Judicial Magistrate Court No.II, Trichy, dismissing the petition filed under Section 311 of Cr.P.C.

2. It is not in dispute that the respondent has filed a private complaint against the petitioner for the alleged offence under Section 138 of Negotiable Instruments Act. It is also not in dispute that the complainant side evidence was over. When the case was pending for defence evidence, the petitioner has filed an application to recall P.W.1 and the same was allowed in Cr.M.P. No.34267 of 2022 on 02.05.2023. But the petitioner has not utilised that opportunity and hence, the complaint side evidence was closed and that when the case was again pending for defence side evidence, the present application came to be filed to recall P.W.1 for further cross examination. The learned Magistrate, taking note of the objections raised by the other side and despite granting opportunities, the petitioner has not utilized the same, dismissed the petition.

3. The learned counsel for the petitioner would submit that the respondent has filed above proceedings alleging that the petitioner has borrowed a sum of Rs.25,00,000/- and that he should be given one more opportunity to cross examine the complainant/P.W.1.



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4. Considering the facts and circumstances of the case and also the fact that the witness sought to be recalled was not at all cross examined and also taking note of the fact that the petitioner is facing trial for the offence under Section 138 of NI Act, this Court is of the clear view that the petitioner should be given one more opportunity to cross examine the witness. But at the same time, considering the length of delay and the conduct of the petitioner, this Court is of the further view that the petitioner must be mulcted with costs and with further condition that the petitioner/accused, should cross examine the witnesses on the day, when the witness is produced before the Court and if for any reason, the petitioner fails to cross examine the said witnesses on that particular day, then he will forfeit his right to cross examine them.

5. In the result, the Criminal Original Petition is allowed and the impugned order in Cr.M.P.No.26695 of 2023 in C.C.No.363 of 2018 on the file of the learned Judicial Magistrate Court No.II, Trichy, is set aside and the petitioner to recall P.W.1 is allowed on payment of cost of **Rs.5,000/-** (Rupees Five Thousand Only) to the respondent and on payment of process



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fee and batta to the said witness and on further condition that the petitioner side should cross examine the witness whenever the witness is produced before the Court and in case of the petitioner's failure to cross examine the particular witness, then he will forfeit his right to cross examine the witnesses. The trial Court is directed to summon the said witness for the purpose of cross examination and complete the examination of the said witness within ten days from the date of receipt of copy of this order. Since the case is pending from 2018, the learned Judicial Magistrate No.II, Trichy, is directed to proceed with the trial and dispose of the same within a period of one month thereafter. Consequently, connected Miscellaneous petition is closed.

04.09.2024

das

To

The Judicial Magistrate Court No.II,
Trichy.

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K.MURALI SHANKAR,J.

das

Order made in
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