



Crl.O.P.(MD)No.12060 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.11.2024**

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD) No.12060 of 2023

and

Crl.M.P.(MD) No.9515 of 2023

1.Pauldoss

Managing Director,
Vasantham Kumari Chit Fund (P) Ltd.,
41D/15A, Panjavar Villai Kovil Street,
2nd Lane, Kattayam Villai,
Parvathipuram, Nagercoil.

2.The Managing Director,

Vasantham Kumari Chit Fund (P) Ltd.,
41D/15A, Panjavar Villai Kovil Street,
Parvathipuram, Nagercoil.

... Petitioners

Vs.

Manivannan

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the entire records relating to the of the Fast Track Court (Magisterial Level), Kovilpatti, Thoothukudi District dated 20.04.2023 in Cr.MP.No.1892 of 2023 in STC.No.76 of 2021 and set aside the same.



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For Petitioners : Mr.S.Ramasamy

For Respondent : Mr.J.Mahesh Kumar

ORDER

This petition has been filed challenging the order passed by the Court below dismissing the application filed under Section 311 of Cr.P.C. to recall P.W.1 for cross examination.

2.Heard the learned counsel for the petitioners and the learned counsel appearing on behalf of the respondent.

3.The respondent filed a private complaint against the petitioners for offence under Section 138 of Negotiable Instruments Act, 1881. The respondent examined himself as P.W.1. The Court below had given opportunity to the petitioners to cross examine the respondent at least on eight occasions. Since the cross examination was not done, the evidence was closed on 29.11.2022. Thereafter, questioning was also done under Section 313(i)(b) of Cr.P.C. The case was posted for defense evidence and at that stage, the application under Section 311 of Cr.P.C. came to be filed to recall to cross examine P.W.1.



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4.The Court below on considering the facts and circumstances of the case and on considering the fact that sufficient opportunity was given to the petitioners to cross examine P.W.1, dismissed the application. Aggrieved by the same, the present petition has been filed before this Court.

5.In the considered view of this Court, there is absolutely no illegality in the order passed by the Court below warranting the interference of this Court. The Court below has mentioned the hearing dates on which the case was listed for the cross examination of P.W.1 and on all those dates, the petitioners did not cross examine P.W.1. Therefore, after eight hearing dates, the evidence of P.W.1 was closed on 29.11.2022.

6.Cross examination of a witness is not the convenience of the accused person. The Apex Court has repeatedly held that the cross examination must take place on the same day when the examination in chief is completed. Section 309 of Cr.P.C. was brought into force only



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for that purpose. Hence, when an opportunity is given and the same is not utilized, the application that is filed subsequently to recall a witness cannot be entertained as a matter of course.

7.This Court expressed its mind to the learned counsel for the petitioners and gave one option to the petitioners to recall P.W.1 for cross examination subject to the condition that they deposit 10% of the total cheque amount. This power is exercised by this Court under Section 143A of the Negotiable Instruments Act, 1881. The learned counsel for the petitioners submitted that they will comply with the condition imposed by this Court.

8.In the light of the above discussion, the petitioners are directed to deposit 10% of the cheque amount before the learned Fast Track Court (Magisterial Level), Kovilpatti, Thoothukudi District, in S.T.C.No.76 of 2021 within a period of four weeks from the date of receipt of a copy of this order. If such deposit is made, the Court below shall recall P.W.1 and fix a day for cross examination of P.W.1. On the same day, the cross examination must be completed. If for any reason,



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the petitioners fail to cross examine P.W.1 on the date of appearance, the petitioners will forfeit their right to recall the petitioners in future. On the alternative, if the petitioners do not deposit the amount as directed by this Court, the order passed by this Court below in Crl.MP.No.1892 of 2023, dated 20.04.2023 will stand revived. Thereafter, the Court below can proceed further to hear the arguments and pass final orders.

9.In the result, this Criminal Original petition is disposed of in the above terms. Consequently, connected miscellaneous petition is closed.

21.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PKN

To

1.Fast Track Court (Magisterial Level),
Kovilpatti, Thoothukudi District.



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N.ANAND VENKATESH,J.

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Dated: 21.11.2024