



Crl.O.P.(MD)No.16212 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.09.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.16212 of 2024
and
Crl.M.P(MD)No.10204 of 2024

Tamilarasi : Petitioner

Vs.

K.Nallasivam : Respondent

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, to set aside the order passed by the learned Judicial Magistrate (Fast Track Court at Magisterial Level at Karur) Karur in M.P.No.11 of 2024 in C.C.No.493 of 2027, dated 14.08.2024 and consequently, direct the learned trial Judge to recall the prosecution witnesses namely P.W.1 for cross examination.

For Petitioner : Mr.P.Samuel Gunasing

ORDER

This Criminal Original Petition is directed against the order passed in M.P.No.11 of 2024 in C.C.No.493 of 2027, dated 14.08.2024 on the file



Crl.O.P.(MD)No.16212 of 2024

of the learned Judicial Magistrate (Fast Track Court at Magisterial Level)
at Karur, dismissing the petition filed under Section 311 of Cr.P.C.

2. The respondent/complainant has filed a private complaint under Section 200 Cr.P.C., against the petitioner for the alleged offence under Section 138 of NI Act.

3. It is not in dispute that since P.W.1 was not cross examined, despite taking time, the complainant side evidence was closed on 29.11.2021; that thereafter, the petitioner has examined two witnesses D.W.1 and D.W.2 and thereafter he has filed the present application to recall P.W.1 for cross examination.

4. The main contention of the petitioner is that P.W.1 was not at all cross examined and that P.W.2 came to be cross examined on 05.02.2020 itself. It is not in dispute that the petitioner has also filed an application under Section 45 of Indian Evidence Act, sending the disputed cheque and the Mortgage deed, dated 11.07.2024 to handwriting experts for comparison of signature and for getting expert opinion in M.P.(MD)No.12 of 2024 and the same was dismissed.



Crl.O.P.(MD)No.16212 of 2024

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5. 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 to be fixed by the trial Court and if for any reason, the petitioner fails to cross examine the said witness on that particular day, then he will forfeit his right to cross examine him.

6. In the result, the Criminal Original Petition is allowed and the impugned order in M.P.No.11 of 2024 in C.C.No.493 of 2017 on the file of the learned Judicial Magistrate (FTC) at Magisterial Level) Karur, is set aside and the petition to recall P.W.1 is allowed on payment of cost of **Rs.5,000/-** (Rupees Five Thousand Only) to the respondent and on



Crl.O.P.(MD)No.16212 of 2024

WEB COPY

payment of process fee and on further condition that the petitioner side should cross examine the witness on the day to be fixed by the trial 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 witness. The trial Court is directed to fix a date for P.W.1 cross examination and complete the examination of the said witness within ten days from the date of receipt of copy of this order. Consequently, connected Miscellaneous petition is closed.

26.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
das

To

The Judicial Magistrate,
(Fast Track Court at Magisterial Level)
Karur.



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Crl.O.P.(MD)No.16212 of 2024

K.MURALI SHANKAR,J.

DAS

Order made in
Crl.O.P.(MD)No.16212 of 2024
and
Crl.M.P(MD)No.10204 of 2024

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