



Crl.O.P.No.11415 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2025

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.11415 of 2025 and
Crl.M.P.Nos.7590 and 7591 of 2025

P.Ganesh

...Petitioner

-Vs-

VSubramani

... Respondent

Prayer: Criminal Original Petition filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023, to set aside the order dated 07.02.2025 passed in Crl.M.P.No.16401 of 2024 in Crl.Appeal No.236 of 2023 on the file of the I Additional (Tada) City Civil and Sessions Court at Chennai.

For Petitioner(s): Mr.Prakash Goklaney

ORDER

Challenging the order passed in Crl.M.P.Nos.16401 and 16402 of 2024 in Crl.Appeal Nos.236 & 237 of 2023 by the I Additional (Tada) City Civil and Sessions Court, Chennai dismissing the applications filed by the petitioner under Section 311 of Cr.P.C to recall P.W.1 for further evidence and under Section 391(i) of Cr.P.C to let in additional evidence.



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2. The petitioner is arrayed as an accused in the complaint lodged

by the respondent for the offence under Section 138 of NI Act. After full fledged trial, the Trial Court convicted the petitioner for the offence under Section 138 of NI Act and sentenced him to undergo 6 months simple imprisonment. Aggrieved by the same, the petitioner preferred appeal in Crl.A.Nos.236 & 237 of 2023 before the I Additional City Civil and Sessions Court, Chennai. Pending appeal, the petitioner filed an application under Section 311 of Cr.P.C for further cross-examination of P.W.1. While re-opening of the evidence of the respondent, the learned counsel for the petitioner submitted that after entering into the appearance by changing the earlier counsel, he came to understand that the vital part of cross examination was not done with the P.W.1. Therefore, in the appeal stage, the petitioner filed an application for further cross-examination of P.W.1. He also submitted that the application is not intended to fill any lacunae.

3. After considering the evidence from both sides, the Trial Court convicted the petitioner for the offence under Section 138 of NI Act and sentenced him to undergo 6 months simple imprisonment. While being so, during the pendency of the appeal, the petitioner filed an application



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to recall P.W.1 for further cross-examination. However, the petitioner forfeited his right to adduce the evidence when nothing had prevented him from doing so during the Trial. In fact, the petitioner did not even file any application to adduce additional evidence or documents before the Trial Court. Therefore, the petitioner cannot be permitted to re-introduce new facts through further cross-examination of P.W.1. When the appeal was posted for arguments, the petitioner filed these applications only to drag the proceedings. Therefore, the present application is nothing but a clear abuse of the process of law and the same were rightly dismissed by the Appellate Court. This Court finds no infirmity or illegality in the order passed by the Appellate Court. Accordingly, the Criminal Original Petition stands dismissed. The Appellate Court is directed to dispose of the appeals within a period of eight weeks from the date of receipt of copy of this order. Consequently, the connected miscellaneous petitions are closed.

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Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
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The I Additional City Civil and Sessions Court, Chennai.



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G.K.ILANTHIRAIYAN. J.

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