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CRL OP No. 23717 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-08-2025

CORAM

THE HONOURABLE MR JUSTICE N. SATHISH KUMAR

CRL OP Nos. 23717 & 23718 of 2025

1. R.Anitha Devi

D/o.Mr.Ramadass, Proprietrix, Indragiri
Enterprises, No.08/24, Bharathi Street,
West Mambalam, Chennai-600 033.

Petitioner in both Crl.OPs

Vs

1. S.K.Elangovan

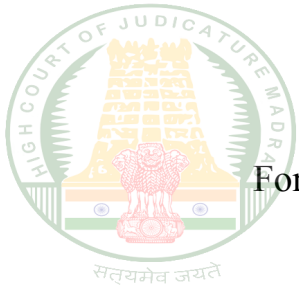
S/o.Mr.Karupaiyan, No.7/3, Ganesh
Flats, Bajanai Koil, 1st Street,
Choolaimedu, Chennai-600 094.

Respondent in both Crl.OPs

PRAYER

Criminal Original Petitions filed u/s.482 of Cr.P.C., set aside the order dated 17.04.2025 passed in Crl.M.P.Nos.2874 & 4261 of 2024 in STC No.658 of 2021 by the learned XI Judge, Small Causes Court at Chennai and consequently to allow the above Crl.OP.

For Petitioner in both Crl.O.Ps : Mr.L.Gavaskar



For Respondent in both Crl.O.Ps : Mr.G. Murugendran

ORDER

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These criminal original petitions are filed by the petitioner challenging the order passed by the XI Judge, Small Causes Court at Chennai in Crl.M.P.Nos.2874 & 4261 of 2024 in STC No.658 of 2021, in and by which, the learned trial Judge allowed the recall and reopen petition on payment of cost of Rs.2000/- to the respondent.

2. It is the contention of the petitioner that though the trial court has allowed the applications filed for recall and reopen the evidence of PW1/complainant for cross examination on payment of cost of Rs.2000/- to the respondent/complainant for each petition on or before 07.04.2025, due to oversight, the cost has not been paid and subsequently, the petitions were dismissed for non compliance of the conditional order. It is the further contention of the learned counsel for the petitioner that the respondent/complainant has misused the petitioner's blank cheques which were given to him by the petitioner towards security purpose and in the event of



petitioner being permitted to cross examine the respondent/complainant (PW1)

only, she can be able to prove the misuse of the blank cheques by the respondent by cross examination of respondent/complainant by rebutting the respondent's case, hence cross examination of PW1 is vital and necessary for the petitioner to prove her case. The non compliance of the conditional order is neither wilful, nor wanton, but due to the bonafide reason of noting down the wrong hearing date. Hence he prayed for setting aside the impugned orders.

3. Heard the learned counsel appearing for the petitioner and learned counsel appearing for the respondent and perused the materials available on record.

4. The complaint has been filed against the petitioner under section 138 of Negotiable Instruments Act in STC.No.658 of 2021 and the same was pending from 2017 and during the course of trial, complainant was examined as PW1 and his evidence was closed as early as in the year 2023. However, after two years, the respondent/complainant has come forward with the



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applications for recalling of PW1 and reopening the evidence of PW1 for cross examination. The petitions have been allowed by the trial court on payment of cost of Rs.2000/- on or before 07.04.2025. It is also made clear that in the order that if the cost is not paid, the applications shall be dismissed. Challenging the same, the present petition has been filed.

5. It is the grievance of the petitioner that due to oversight, the orders of the trial court has not been immediately noted by the counsel which leads to non compliance of the orders, which ultimately resulted in dismissal of the petitions seeking reopening and recalling the evidence of PW1.

6. Considering the nature and circumstances, under which the recall and reopen petitions are dismissed, this court is of the view that there is lethargic attitude on the part of the lawyer of the petitioner and if no cross examination has been done, petitioner's right of cross examining PW1 would be forfeited only because of the mistake committed in not paying the cost. In such a view of the matter, this court hereby imposes a cost of Rs.10,000/- (Rupees ten



thousand only) each in both the petitions payable to the complainant/respondent within a period of one week from the date of receipt

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of a copy of the order. On payment of such cost, the trial court shall fix a date for cross examination of PW1 and on the same day, cross examination of PW1 shall be done. If the petitioner is not in a position to cross examine PW1 on the same day fixed by the trial court, he has no further right to cross examine the PW1.

7. With the above direction, these Criminal Original Petitions are disposed of. Further, the trial court is also directed to dispose of STC.No.658 of 2021 case within a period of two months from the date of receipt of a copy of this order.

msr

28-08-2025

Index: Yes/No

Internet: Yes



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To

S.K.Elangovan

S/o.Mr.Karuppaiyan, No.7/3, Ganesh

Flats, Bajanai Koil, 1st Street,

Choolaimedu, Chennai-600 094.

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N.SATHISH KUMAR J.

msr

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