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Crl.O.P.No.27122 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2025

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAYAN

**Crl.O.P.No.27122 of 2024 &  
Crl.M.P.No.15034 of 2024**

1. M/s. Samraj Constructions Pvt. Ltd.,  
represented by its Managing Director  
Mr.Deepak Raju  
having registered Office at  
No.95 & 96, Bharati Park Road,  
Cross II, Saibaba Colony,  
Coimbatore 641 011.
2. Mr. Deepak Raju,  
Managing Director cum Authorised  
Signatory M/s. Samraj Constructions  
Pvt. Ltd., having registered Office at  
No.95 & 96, Bharati Park Road,  
Cross II, Saibaba Colony,  
Coimbatore 641 011.

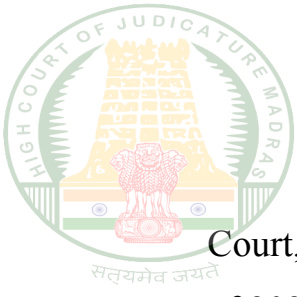
.. Petitioners

-VS-

M/s. Radha Infra,  
represented by its Authorised Signatory  
Mr.Lakshminarayanan  
having its office at  
No.150, Defense Officers Colony,  
Ekkatuthangal,  
Chennai 600 032.

... Respondent

Prayer: Criminal Original Petition filed under section 528 of BNSS to set aside the order passed by the learned XXVII Metropolitan Magistrate



Crl.O.P.No.27122 of 2024

Court, Saidapet, Chennai in Crl.M.P.No.16298 of 2024 in S.T.C.No.2286 of 2023 dated 27.09.2024.

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For Petitioner : Mr. K.J. Saravanan

For respondents: Mr. R. Saravana Kumar

### **ORDER**

This Criminal Original Petition is filed praying to set aside the order passed by the learned XXVII Metropolitan Magistrate Court, Saidapet, Chennai in Crl.M.P.No.16298 of 2024 in S.T.C.No.2286 of 2023 dated 27.09.2024.

2. The respondent/complainant herein has lodged a complaint against the petitioners/A1 and A2 herein in STC.No.2286 of 2023 before the XXVII Metropolitan Magistrate, Fast Track Court, Chennai, for the offence under section 138 of Negotiable Instruments Act. Pending trial, after completion cross examination of PW1, the respondent/complainant filed an application to recall PW1 to mark certain documents in Crl.M.P.16298 of 2024 stating that the respondent/complainant had inadvertently missed out to file the documents, which were admitted during the cross examination of PW1.

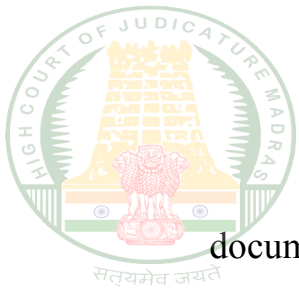


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3. The learned counsel for the petitioners/A1 and A2 would submit that the respondent/complainant was fully cross examined by the petitioners when the matter is posted for questioning under section 313 Cr.P.C. At this stage, the respondent filed an application under section 311 of Cr.P.C., to recall PW1 to mark certain documents and examine the same only in order to fill up the lacuna. During the time of cross examination itself, the respondent/complainant had categorically deposed that these documents were not required to be marked since it is a complaint given under section 138 of NI Act. However, the learned trial Judge allowed the above application, thus he prayed for setting aside the impugned order.

4. Learned counsel for the respondent submitted that even though at the time of examination of PW1, due to inadvertence, he failed to file the documents, however, on 02.08.2024, when the case came up for hearing, permission was sought to mark such documents and the trial court suggested that those documents will have to be marked through the defence witness. Since the petitioners/accused did not come forward to give evidence, the petitioner has filed petition to recall PW1 to mark the



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documents as additional evidence. He further submitted that the

documents sought to be marked are admitted documents and based on the above mentioned documents, cross examination of PW1 is just and necessary to meet the ends of justice. Hence, the trial court having found that the documents sought to be marked will have a bearing on the result of the case, rightly allowed the petition. Therefore, the order passed by the trial court needs no interference, hence, he prayed for dismissal of this petition.

5. On perusal of the application filed by the respondent/complainant under section 311 Cr.P.C., the respondent/complainant wants to mark the documents such as (i) offer letter of the complainant, (ii) work order issued by the accused to the complainant, (iii) payment advise between the complainant and accused (iv) WhatsApp communication and (v) e-mail communications between the petitioners and respondent stating that due to inadvertence, he failed to mark the documents and when he attempts to mark the documents during cross examination of the accused, the accused did not enter the witness box, hence, he is compelled to file the present petition for the purpose of marking additional documents and if these documents are marked, no prejudice would be caused to the



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accused/petitioners. It is seen that though only after closing the evidence of witnesses, the respondent/complainant filed the application to recall PW1 for the purpose of marking additional documents on his side, the trial court having found that the documents sought to be marked will have a bearing effect on the result of the case and the accused has not shown as to in what way he would be prejudiced if the documents are received as additional evidence and also considering the legal position that mere procedural niceties would not be a reason for refusing remedy, has rightly allowed the application to recall PW1 for marking additional evidence.

6. In view of the above discussion, this Court finds no illegality or irregularity in the order passed by the learned trial Judge. Therefore, the Criminal Original Petition is dismissed. The trial court is directed to proceed with the trial proceedings and complete same within a period of three months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed.

20.02.2025

msr

Index:yes/no

Internet:yes/no

**G.K. ILANTHIRAIYAN, J.**



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