

IN THE COURT OF METROPOLITAN MAGISTRATE,  
FAST TRACK COURT AT MAGISTRERIAL LEVEL – IV,  
GEORGE TOWN, CHENNAI-01.

Present : G. Sivakumar B.Sc., B.L.,  
METROPOLITAN MAGISTRATE, Fast Tract Court – IV,

Dated 04<sup>th</sup> Day of August 2022

Crl.MP. No: 7951 / 2022

in

CC.No.2868 / 2019

Mr.Kishore T.Khanna, S/o.Tejbhandas Khanna,  
BBCL Vajra, Tower-2, Flat, 11A, 11<sup>th</sup> Floor,  
200 ft road, Chennai by pass nolambur,  
Mogappair West, Chennai-095.

... Petitioner / Accused

//vs//

M/s.Arvind Saraf and Sons HUF,  
Rep by Mr.Arvind Saraf, No.9,  
M.C.Road, Old Washermenpet,  
Chennai-021, Rep by power Agent  
Mr.S.Mohan Kumar

...Respondent / complainant

This Petition has come up before me for final hearing on 21.07.2022 in the presence of S.Mohamed Dhurabudeen Advocate appearing for the Petitioner and Mr.R.Pawan Kumar Dhanuka Advocate appearing for the Respondent, on hearing arguments of both sides and upon perusing records, having stood over for consideration till this day, this court delivers the following.

ORDER

1. This petition has been filed U/s.311 of Cr.P.C. for recall for the purpose of cross-examination for the reasons stated that on 19.11.2021, the respondent filed petition u/s.145(1) and examined as PW1, The petitioner has failed to cross examine PW1 on

10.03.2021 and hence this court has closed the opportunity to cross examine PW1, it is vital and the petitioner is now ready to cross examine PW1.

2. The respondent has filed counter stating that the case was posted for judgment when this petition was filed, it is filed after more than one year, subsequently on several hearings, there was no representation and this petition has been filed to prolong the proceedings.

3. Heard both sides. Perused the records. The point for determination is whether PW1 is to be recalled for cross examination or not.

4. This court has perused the notes paper and finds that on 09.11.2020 itself PW1 evidence was recorded and from that period, the petitioner has not chosen to cross examine PW1 and on 10.03.2021 it was closed. Thereafter, on various steeges, the petitioner has not filed application for recall.

5. On one side, it appears that the petition has prolonged the proceedings. On the other hand, in cases u/s.138 of NI Act, the accused has reverse burden of proof and he cannot establish the defence without cross examination of Pw1. On consideration of above two aspects, this court holds that allowing this petition on costs and condition will be fit and proper.

6. Hence, this petition will be allowed on costs of Rs.5000/- to be paid by the petitioner to the respondent on or before 16.08.2022 and on a condition that PW1 shall be cross examined on the day when he will appear. call on 17.08.2022

Metropolitan Magistrate, Fast Tract Court – IV,  
George Town, Chennai - 01.