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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl.O.P. No.9849 of 2022 & Crl.M.P.No.5787 of 2022

Mohamed Ali ... Petitioner

Vs.

Duraimurugan ... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the Order dated 01.04.2022 made in Crl.M.P.No.815 of 2022 in C.C.No.263 of 2016 on the file of the Judicial Magistrate [FTC], Kallakurichi by allowing this Criminal Original Petition.

For Petitioner : Mr.N.Manoharan

O R D E R

This Criminal Original Petition has been filed against the dismissal of the petition filed by the petitioner to recall P.W.1 for cross examining the witness in Crl.M.P.No.815 of 2022 in C.C.No.263 of 2016 on the file of the learned Judicial Magistrate [FTC], Kallakurichi, dated 01.04.2022.

2. At the outset, on a perusal of the Order of the trial Court, this Court is of the view that the Order does not suffer from any infirmity. In fact, the conduct of the petitioner in protracting the proceedings is highly deprecated from the year 2009. The petitioner is protracting the matter by one way or other and he has not cross examined P.W.1. Now, the petition filed to recall P.W.1 to cross examine the witness has been non suited by the trial Court and such an Order is based on several adjournments took by the petitioner. The conduct of the petitioner in protracting the matter has been clearly exhibited in the Order of the trial Court. However, since the petitioner is facing prosecution for the offence under section 138 of the Negotiable Instruments Act and the burden is also on the part of the petitioner to dislodge the legal presumption, this Court is

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of the view that one final chance to be given to the petitioner.

3. Accordingly, this Criminal Original Petition is allowed and Order dated 01.04.2022 made in Crl.M.P.No.815 of 2022 in C.C.No.263 of 2016 on the file of the learned Judicial Magistrate [FTC], Kallakurichi is set aside on payment of cost of Rs.10,000/- [Rupees ten thousand only] to the Madras Advocate Clerks' Association within a period of two weeks and produce the receipt before the trial Court. On such production of the receipt, the trial Court shall fix a specific date for examination of P.W.1 and the cross examination shall be completed on the same day and thereafter, the evidence on the defence side shall be completed within period of one week and if the defence side evidence is not completed within one week, the trial court shall proceed as per law. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IV)

// True Copy //

Sub Assistant Registrar

vrc

To,

The Judicial Magistrate,
[FTC], Kallakurichi.

Copy to:
The Officer-in-Charge/Treasurer
Madras Advocate Clerks Association,
Madras.

+1cc to Mr.N.Manokaran, Advocate SR.No.38594

Crl.O.P. No.9849 of 2022

PM(CO)
CB(01/07/2022)

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