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Crl.O.P No.22822 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **03.11.2022**

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Crl.O.P No.22822 of 2022
and Crl.M.P. No.14629 of 2022

V.P.Pachiyappan

... Petitioner

Vs.

S.Deepa
Represented by her Power of Attorney Holder
K.Shanmugam

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, praying to set aside the order dated 17.08.2022 made in C.M.P. No.5450 of 2022 in S.T.C. No.331 of 2020 on the file of Judicial Magistrate, Kumarapalayam by allowing the Criminal Original Petition.

For Petitioner : Mr. C.S.Saravanan

For Respondent : Mr. T.N.Rangesh Kannan



ORDER

This petition is filed to set aside the order dated 17.08.2022 made in C.M.P. No.5450 of 2022 in S.T.C. No.331 of 2020 on the file of Judicial Magistrate, Kumarapalayam.

2. On the complaint given by the respondent Deepa through his power of attorney namely K.Shanmugam, a case has been registered against the petitioner in S.T.C. No.331 of 2020 for the offence under Section 138 of Negotiable Instruments Act. During the pendency of proceedings, the petitioner filed a petition under Section 311 Cr.P.C. in C.M.P. No.5450 of 2020 before the learned Judicial Magistrate, Kumarapalayam, to recall one witness by name Prakash and to examine him as D.W.2. The said petition was dismissed. Aggrieved over the dismissal, this Criminal Original Petition has been preferred.

3. The learned counsel for the petitioner submitted that the learned Magistrate had chosen to dismiss the petition on the ground of delay, but in the interest of justice, an opportunity should be given to the petitioner to examine the said witness on his side.



4. The learned counsel for the respondent submitted the case was originally filed before the learned Judicial Magistrate, Tiruchengode in the year 2011 and later got transferred on the point of jurisdiction to the Judicial Magistrate, Kumarapalayam and renumbered as S.T.C. No.331 of 2020; despite the case is pending for nearly eleven years, the petitioner was not cooperating for earlier disposal; this petition has been filed only with a view to drag on the proceedings and hence the order of the learned Judicial Magistrate, Kumarapalayam should be upheld.

5. On perusal of the order of learned Judicial Magistrate, Kumarapalayam passed in C.M.P. No.5450 of 2022, it is seen that observations have made about the conduct of the petitioner. It is pointed out in the order that the petitioner did not state about the said witness when he was questioned under Section 313 Cr.P.C. after the conclusion of the trial. It is further observed that even in his reply notice or during the cross examination of P.W.1, the said fact was not revealed.

6. Though the reasons stated by the learned Judicial Magistrate to dismiss the petition are reasonable, for the offence under Section 138 of the



Negotiable Instruments Act the accused has got a duty to disprove the initial presumption that might arise in favour of the complainant under Section 139 of the Negotiable Instruments Act. The petitioner has got the duty to rebut the initial presumption and for which he should be given with sufficient opportunity. It would have been fine if the petitioner had made use of the opportunity and filed this petition at an earliest point of time. Only on the ground of delay, the petitioner should not be deprived to examine the witness whom he believes to be an important witness of his side.

7. Considering the delay and also the inconvenience caused to the respondent, I feel that this petition should be allowed on condition that the petitioner should bring the witness and complete the examination in a prescribed day and he shall do pay cost.

8. Accordingly, the petitioner is directed to produce the witness Prakash by himself on 21.11.2022 and complete the examination of the said witness on the same day and to pay a sum of Rs.2,000/- (Rupees Two Thousand Only) to the respondent on or before 21.11.2022 failing the above condition will deprive the petitioner from getting the benefit of this order.



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9. With the above condition, this Criminal Original Petition is allowed and the order dated 17.08.2022 passed by the learned Judicial Magistrate, Kumarapalayam in C.M.P. No.5450 of 2022 in S.T.C. No.331 of 2020 is hereby set aside. Consequently, connected miscellaneous petition is closed.

03.11.2022

Index : Yes/No
Speaking Order : Yes / No

Note of Office: Issue order copy by 04.11.2022
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To:

The Judicial Magistrate, Kumarapalayam.



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R.N.MANJULA, J.,

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