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Crl.RC.No.1497 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2022

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Revision Case No.1497 of 2022

and

Crl.M.P.No.17231 of 2022

Naveenraj

... Petitioner

Vs.

Rajendran

... Respondent

Prayer: Criminal Revision filed under Section 397 and 401 of Criminal Procedure Code, praying to call for the order and records in C.M.P.No.4529 of 2022 in C.C.No.530 of 2020 and set aside the order dated 18.10.2022 passed by the learned Judicial Magistrate No.1, Namakkal.

For Petitioner : Mr.K.Selvakumar

For Respondent : Mr.N.Manokaran

**ORDER**

This Criminal Revision Case has been filed seeking to set aside the order in C.M.P.No.4529 of 2022 in C.C.No.530 of 2020 dated 18.10.2022 passed by the learned Judicial Magistrate No.1, Namakkal.

2. The petitioner is the complainant and the respondent is the accused. The petitioner filed a complaint against the respondent in C.C.No.530 of 2020 on the file of the Judicial Magistrate No.1, Namakkal for the offence under Section 138 and 142 of Negotiable Instruments Act. After taking cognizance of the complaint, the petitioner was examined as P.W.1 and thereafter, he was cross examined by the respondent and during the cross examination, the respondent came to know that there was some conversation between the petitioner and the respondent over cell phone. However, the respondent stoutly denied the said conversation over cell phone and therefore, in order to prove the same, the respondent wanted to examine a staff from BSNL and the Bank Manager, Canara Bank. Hence, the respondent filed the petition under Section 254 Cr.P.C. before the Court below in C.M.P.No.4529 of 2022 and the said petition was allowed by order dated 18.10.2022. Challenging the same, the petitioner has filed the present revision before this Court.



3. The learned counsel for the petitioner would submit that the case was filed in the year 2020 and upto the year 2022, the accused did not take any steps and after closing of the evidence on the side of the petitioner, in order to protract the proceedings, he files petitions after petitions. He would further submit that the Bank Manager, Canara Bank/P.W.2, was already cross examined by the accused and the evidence of P.W.2 was closed on 22.11.2021. However, without taking steps to recall and re-open the witness P.W.2, the accused filed the said petition which is against law and procedure. The accused adopted this method only to protract the case in one way or other and the learned Magistrate failed to take into consideration of the attitude of the accused and allowed the petition which warrants interference.

4. The learned counsel for the respondent would submit that the statutory notice was not served and due to pandemic situation, the accused could not take steps in time. He would further submit that when the petitioner was cross examined on the side of the respondent, the petitioner stated that there was a cell phone conversation between the petitioner and the respondent. But there was no such conversation and the respondent



neither borrowed any money nor issued any cheque to the petitioner. Even the petitioner is not known to the respondent. The learned Magistrate considering the facts and circumstance, allowed the petition. He would submit that even if the petition is allowed and further witnesses are examined on the side of the respondent, no prejudice would be caused to the petitioner. Therefore, there is no merit in the revision and the revision is liable to be dismissed.

5. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials on record.

6. Admittedly, the petitioner is the complainant in C.C.No.530 of 2020 on the file of the Judicial Magistrate No.1, Namakkal and the respondent is the accused in the said complaint. During the pendency of the case, the respondent filed the petition in C.M.P.No.4529 of 2022 under Section 254 Cr.P.C. to examine the petition mentioned witnesses on the side of the respondent and the said petition was allowed by the learned Judicial Magistrate. Aggrieved over the same, the petitioner is before this Court.



7. A perusal of the material shows that the petitioner has not stated anything about the cell phone conversation between him and the respondent either in his notice or in the complaint and for the first time during the cross examination, he has introduced the said story that the petitioner called the respondent over cell phone and there was some conversation between them. The respondent stoutly denying the same and in order to disprove that there was no cell phone conversation between the petitioner and the respondent at the relevant point of time, the respondent filed the petition before the Magistrate under Section 254 Cr.P.C. and the learned Magistrate considering the facts and circumstance allowed the said petition.

8. Admittedly, the accused need not rebut the presumption by let in direct evidence and the accused can rebut the presumption by preponderance of probability. In order to rebut the presumption by preponderance probability, the accused has got every right to take possibility of defence. Even if the staff of BSNL and the P.W.2/Bank Manager are examined, no prejudice would be caused to the petitioner herein. However the respondent has approached the Court belatedly and therefore, in order to show his bonafide, the respondent is directed to



deposit a sum of Rs.3,50,000/- (Rupees Three Lakhks Fifty Thousand Only) before the Judicial Magistrate No.1, Namakkal, on or before 16.12.2022 and on such deposit, the Magistrate is directed summon the said witnesses and the respondent herein shall be permitted to examine the witnesses. Failing to deposit the above said amount within the stipulated time, the order of the Magistrate shall stand set aside and the learned Magistrate shall proceed further in accordance with law as if, there is no order in C.M.P.No.4529 of 2022 dated 18.10.2022.

9. With the above directions this Criminal Revision case is dismissed. Consequently, connected Miscellaneous Petition is closed.

02.12.2022

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Note: Issue order copy on 08.12.2022



Crl.RC.No.1497 of 2



To

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The Judicial Magistrate No.1,
Namakkal.



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Crl.RC.No.1497 of 2



P.VELMURUGAN,J.

Ksa-2

Criminal Revision Case No.1497 of 2022

02.12.2022