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Crl.R.C.No.691 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.691 of 2023 and
Crl.M.P.No.5340 of 2023

T.R.Muthukumarasami

... Petitioner

Vs.

Senthuran

... Respondent

PRAYER: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order dated 09.03.2023 made in C.M.P.No.5720 of 2022 in S.T.C.No.443 of 2019 on the file of the Judicial Magistrate No.I, Gobichettipalayam by allowing this petition.

For Petitioner : Mr.M.Guruprasad

For Respondent : Mr.S.Kuberan for
Mr.V.Anandhamoorthy

ORDER

The petitioner/accused who is facing trial under Section 138 of the Negotiable Instruments Act, 1881 has filed a petition under Sections 45 & 65 of the Indian Evidence Act in Crl.M.P.No.5720 of 2022 in S.T.C.No.443 of 2019 before the learned Judicial Magistrate No.I, Gobichettipalayam (trial



Court). The trial Court *vide* impugned order, dated 09.03.2023 dismissed the same, against which the present criminal revision case.

2.The learned counsel for the petitioner submitted that the petitioner was having a mobile phone with number 7010607954 with registered e-Mail ID senthurrcones@gmail.com. For the period between 02.03.2019 and 05.04.2019, the petitioner was not in the place as projected by the respondent/complainant. During the said period, the loan is said to have given by the respondent. The petitioner was not in Kothampalayam village, but he was in Uthukuli, Erode district. The contention of the petitioner is that the petitioner needs to examine on whose name the mobile number 7010607954 registered and e-Mail ID registered. Further, the petitioner gave details about the mobile phone location particulars during the said period. Now, the petitioner is ready to produce the simcard and mobile phone to the Court and the same may be sent to the cybercrime for examination. Hence, he prays for setting aside the order of the Court below.

3.The learned counsel for the respondent/complainant submitted that the respondent examined as PW1 who had been cross examined in detail. In the



cross examination, no such question put to the petitioner. On the other hand, the petitioner examined himself as DW3. In his evidence, for the first time, he stated that during the period between 02.03.2019 and 05.04.2019, the petitioner was not in station and also denied about the receipt of the loan from the respondent. Further, his evidence was stopped for production of some more documents and thereafter, the petition under Sections 45 and 65 of Indian Evidence Act filed only to protract the trial before the trial Court. Hence, prays for dismissal.

4.Considering the submissions and on perusal of the materials, it is seen that the case in S.T.C.No.443 of 2019 has been pending for trial for more than six years. The evidence of PW1 recorded as early as 04.03.2021 and thereafter, he was recalled and cross examined on 08.07.2022. The petitioner examined himself as DW3 on 28.10.2022 and thereafter, he filed the petition under Sections 45 & 65 of the Indian Evidence Act on 09.11.2022 and finally, the same was disposed on 09.03.2023.

5.The reason given by the learned counsel for the petitioner is untenable that too in a case of 138 of the Negotiable Instruments Act, 1881. The



petitioner's contention is that he was not in the village during the period between 02.03.2019 and 05.04.2019 and he was elsewhere.

6.If the petitioner wants to furnish the call detail particulars or tower location particulars, it is for him to get the information from the service providers that to for the period between 02.03.2019 and 05.04.2019. It is a known fact that the service providers used to maintain the records only for a period of six months to three years. In this case, admittedly, it is beyond the period of three years and no such particulars will be available. Thus, the petitioner filed the petition under Sections 45 and 65 of the Indian Evidence Act is only to protract the trial before the trial Court. In view of the same, the petitioner's contention cannot be accepted and this Court is not inclined to interfere with the detailed and well reasoned impugned order.

7.In the result, the impugned order, dated 09.03.2023 in Crl.M.P.No.5720 of 2022 in S.T.C.No.443 of 2019 before the learned Judicial Magistrate No.I, Gobichettipalayam is confirmed. Accordingly, this Criminal Revision Case stands dismissed.



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8.Finding that the case has been pending from the year 2019, the trial Court is directed to complete the proceedings in S.T.C.No.443 of 2019 within a period of two months from the date of receipt of a copy of this order. The connected criminal miscellaneous petition is closed.

15.03.2024

Speaking order/Non-speaking order
Index: Yes/No
Internet: Yes
Neutral Citation: Yes/No

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To

The Judicial Magistrate No.I,
Gobichettipalayam.



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M.NIRMAL KUMAR, J.

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