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Crl.O.P.No.18958 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2024

CORAM

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**

Crl.O.P.No.18958 of 2024

and

Crl.M.P.No.11203 of 2024

M.Vinothkumar

... Petitioner

Vs.

R.Gunasekar

... Respondent

Prayer: Criminal Original Petition is filed under Section 530 of B.N.S.S, 2023, praying to set aside the order dated 15.06.2024 passed in Crl.M.P.No.3275 of 2024 on the file of the Judicial Magistrate Fast Track Court No.1, Erode by allowing the present petition.

For Petitioner : Mr.M.Karthik

ORDER

The petition filed to reopen S.T.C.No.263 of 2021 dismissed by the Judicial Magistrate on 15.06.2024, assigning the following reasons:

The petitioner filed these petitions second time for the same relief. Already the petitioner/ accused filed the



CrI.O.P.No.18958 of 2024

petitions for the same relief in CMP.Nos.61/2024 and 62/2024 and the same were allowed on 21.04.2024. Witness summon sent to the Bank Manager in D.No.212/2024 on 13.02.2024. But the Manager not appeared on 28.02.2024. Since the Bank Manager is a public officer witness warrant not issued against him further the petitioner/ accused undertake to produce the said witness on 11.03.2024. The petitioner/ accused has not produced the said witness on 11.03.02024 and sought time for examination of said witness and hence case was adjourned on 25.03.2024. Even sufficient opportunities given to the witness to examine to the said Bank Manager, the petitioner/ accused has not take effective steps to examine the said witness on defense side. Hence examination of Bank Manager, Indus Ind Bank, was closed and the case is posted on 27.03.2024 for arguments. In this stage, the petitioner/ accused filed these petitions second time to examine the said witness to prove the issuance of cheque period. On perusal of records Ex.P1 cheque is a CTC Cheque. Hence examination of said Bank Manager will not solve any purpose. Further already the petitioner/ accused filed the petitions for the same relief and the same were allowed. For which second petition for the same relief is not maintainable.



CrI.O.P.No.18958 of 2024

WEB COPY

2. To set aside the above order the present original petition is filed under Section 482 of the Code of Criminal Procedure.

3. It is contended that in a complaint under Section 138 of Negotiable Instruments Act, the evidence of Bank Manager is important to prove the defense when the accused claim that the subject cheque was not issued by him and the account was requested to be closed in the month of February 2016 itself. Therefore, the order of the trial Court is liable to be set aside.

4. From a reading of the petition and the documents filed, this Court find that S.T.C.No.263 of 2021 is a private complaint under Section 138 of the Negotiable Instruments Act taken on file by the Judicial Magistrate Fast Track Court No.1, Erode. The subject cheque issued for Rs.3,00,000/- by the accused/ petitioner was returned with an endorsement account dormant. After serving statutory notice the complaint has been filed and the trial is in progress. For the second time the petitioner has filed reopen application. The earlier petition which



CrI.O.P.No.18958 of 2024

was allowed on 21.04.2024 not pursued by the petitioner and allowed to be closed without examining the witness. Therefore, there cannot be multiple opportunities to the accused person to file application to reopen after his failure to avail the first opportunity. Hence, this Court find no perversity in the order passed by the trial Court to set aside the order.

5. As a result, this Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petition is closed.

08.08.2024

Index : Yes/No
Neutral Citation : Yes/No
dsa



CrI.O.P.No.18958 of 2024

To

WEB COPY

- 1.The Judicial Magistrate Fast Track Court No.1,
Erode.
- 2.The Public Prosecutor,
High Court of Madras,
Chennai.



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Crl.O.P.No.18958 of 2024

Dr.G.JAYACHANDRAN,J.

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Crl.O.P.No.18958 of 2024

08.08.2024