



WEB COPY



CrI.R.C.No.1452 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.1452 of 2024

and

CrI.M.P.No.12237 of 2024

M.Dhanashekar

... Petitioner/Accused

Vs.

K.Udhayakumar (Died)

U.Latha

W/o.Late K.Udayakumar

... Respondent/Complainant

Prayer: Criminal Revision Petition filed under Sections 438 and 442 of Bharatiya Nagarik Suraksha Sanhita, 2023, praying to call for the records pertaining to C.M.P.No.6269 of 2023 in S.T.C.No.561 of 2016 pending on the file of learned Judicial Magistrate, Sathyamangalam and set aside the same.

For Petitioner : Mr.S.Ganeshkumar

ORDER

This petition has been filed seeking to set aside the order passed in CrI.M.P.No.6269 of 2023 in S.T.C.No.561 of 2016 by the learned Judicial Magistrate, Sathyamangalam.



Crl.R.C.No.1452 of 2024

WEB COPY

2.The petitioner/accused, who is facing trial in S.T.C.No.561 of 2016 for offence under Section 138 of the Negotiable Instruments Act, had filed a petition under Section 315 Cr.P.C. in Crl.M.P.No.6269 of 2023 to examine himself as defence witness.

3.The contention of the learned counsel for petitioner is that since there is a statutory presumption against the petitioner under Negotiable Instruments Act, he proposed to examine himself as witness by entering to the box and to probabalise his defence and also to prove that the cheque was not given in discharge of any liability. Considering the petitioner's submission the petition allowed, petitioner permitted to be examined as defence witness. On 17.05.2024, petitioner suddenly fell ill and could not inform his counsel in time. Hence, no petition filed to condone his absence, nor his health condition could be informed. The trial Court finding that the petitioner/accused absenting himself, dismissed the petition in Crl.M.P.No.6269 of 2023.

4.The learned counsel for petitioner submitted that the case periodically adjourned at the stage of arguments from 31.05.2024 and the



Crl.R.C.No.1452 of 2024

petitioner is ready to appear before the trial Court on the next hearing date, i.e., 06.09.2024, enter the witness box, and to depose without fail. He further submitted that his valuable right of defence would be denied if he is not permitted to examine himself as witness, since it is the petitioner to probabalise his defence and disprove the case.

5.Since the trial Court already permitted the petitioner to examine himself as defence witness by order in Crl.M.P.No.6269 of 2023, this Court finds notice to the respondent not required. Hence, notice to the respondent dispensed with.

6.The petitioner has now come forward to appear before the trial Court on 06.09.2024 and to depose evidence. In view of the same, this Court is of the view that real and substantial justice would be satisfied only when the petitioner is given access to defend his case.

7.In view of the same, the impugned order passed in Crl.M.P.No.6269 of 2023 in S.T.C.No.561 of 2016 dated 17.05.2024 by the learned Judicial Magistrate, Sathyamangalam is set aside. The petitioner is directed to appear



Crl.R.C.No.1452 of 2024

before the trial Court on 06.09.2024, examine himself as defence witness and thereafter trial Court to hear the arguments and conclude the proceedings without delay.

8. Accordingly, the Criminal Revision Case is allowed. Consequently, connected Criminal Miscellaneous Petition is closed.

03.09.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
rsi

Note: Issue order copy on 04.09.2024.



Crl.R.C.No.1452 of 2024

WEB COPY

To

1.The Judicial Magistrate,
Sathyamangalam.

2.The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.R.C.No.1452 of 2024

M.NIRMAL KUMAR, J.

rsi

Crl.R.C.No.1452 of 2024
and
Crl.M.P.No.12237 of 2024

03.09.2024