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*Crl.R.C.No.1633 of 2024*

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 12.11.2024

CORAM :

**THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

Crl.R.C.No.1633 of 2024  
and  
Crl.M.P. No.13540 of 2024

M.Rajamanickam

...Petitioner/Accused

Versus

N.Shanmugam

...Respondent/Complainant

PRAYER : Criminal Revision Petition filed under Section 438 and 442 of the Bharatiya Nagarik Suraksha Sanhita to call for the records pertaining to the order dated 20.08.2024 in C.M.P.No.2944 of 2024 in S.T.C No.732 of 2019 on the file of the learned Judicial Magistrate, Fast Track Court (Magisterial Level) Poonamallee and set aside the same.

For Petitioner : Mr.N.Shanmugam

For Respondent : Mr.D.Murthy

**ORDER**



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The petitioner, who is an accused in the proceedings initiated by the respondent/complainant for the offence under Section 138 of the Negotiable Instruments Act, 1881, aggrieved by the dismissal of his petition to summon two bank witnesses, has preferred this petition.

2. The petitioner is facing trial for the offence under Section 138 of the Negotiable Instruments Act, 1881. According to the respondent/complainant, he is said to have received Rs.30,00,000/- on 02.04.2014, Rs.25,00,000/- on 31.05.2014 and Rs.25,00,000/- on 30.09.2014 as a loan and towards discharge of the said loan, he had issued a cheque for Rs.80,00,000/-. The petitioner filed a petition before the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Poonamallee, for summoning two Bank witnesses to rebut the statutory presumption. The said petition was dismissed by the learned Magistrate on the ground that it is without merit and filed to delay the proceedings.

3. Mr.S.Sasikumar, the learned counsel for the petitioner/accused would submit that as regards the first alleged receipt of Rs.30,00,000/- by the petitioner, the respondent had made contradictory statements as to how the said money was received by the petitioner; that initially he had



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stated that it was through a bearer cheque and later it was given to the son of the petitioner; and that this has to be clarified through the Bank Manager and the passbook of the complainant would not be sufficient to establish the case of the petitioner. The learned counsel, however, was unable to point out any justification for summoning the Manager of the Bank, in which the accused maintained that account.

4. Mr.D.Murthy, the learned counsel for the respondent/complainant, *per contra*, would submit that the passbook of the complainant Bank was marked in the trial and therefore the petition to summon the Manager of the complainant Bank is vexatious; and that there is no reason to summon the Bank Manager of the accused Bank and prayed for dismissal of the revision.

5. Heard both sides.

6. The trial Court found that the petition to summon both the Bank witnesses was unnecessary and was filed to prolong the trial and dismissed the said petition.



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7. This Court, on perusal of the petition filed by the accused/petitioner, finds that the respondent/complainant had stated in the cross-examination that on 02.04.2014, a sum of Rs.30,00,000/- (Rupees Thirty Lakhs only) was withdrawn by the petitioner through a bearer cheque. In order to ascertain this fact and to test the veracity of such a statement, the petitioner is entitled to call the Manager of the complainant Bank. However, since the petitioner has not justified the summoning of the Bank Manager of the Indian Bank, Porur Branch, Chennai, in which the petitioner maintained an account, the said witness need not be called. Therefore, the petitioner is permitted to summon the manager of the Andhra Bank, Valasarawakkam Branch, Chennai, under Section 242 of Cr.P.C. However, since the case is of the year 2019, the process of examination of witnesses shall be completed within a period of four (4) weeks from the date of receipt of a copy of this order.

8. In the result, the order in C.M.P.No.2944 of 2024 in S.T.C.No.732 of 2019 on the file of the learned Judicial Magistrate, Fast Track Court, (Magisterial Level) Poonamallee, is set aside and the petition is partly allowed to the extent of summoning the Bank Manager of Andhra Bank, Valasarawakkam Branch, Chennai. Consequently, the



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connected miscellaneous petition is closed.

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Index: Yes/No

Speaking Order / Non-Speaking Order

NCC: Yes / No

To

The Judicial Magistrate,  
Fast Track Court (Magisterial Level)  
Poonamallee.

**SUNDER MOHAN, J**

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