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CrI.RC No.1773 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 10.12.2024

PRONOUNCED ON : 17.12.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

CrI.R.C.No.1773 of 2024
and CrI.M.P.No.14588 of 2024

V.E.Govindarajulu ... Petitioner/Accused

Vs.

M.Suresh ... Respondent/Complainant

PRAYER in CrI.R.C.No.1773 of 2024: Criminal Revision Case filed under Sections 397 r/w 401 of the Cr.P.C., to call for the records and set aside the order passed in CrI.M.P.Sr.No.2403 of 2024 in STC No.5826 of 2023 dated 23.09.2024 on the file of the learned FTC II Metropolitan Magistrate Allikulam, at Chennai, by allowing the Criminal Revision.

PRAYER in CrI.M.P.No.14588 of 2024: Criminal Miscellaneous Petition is filed to stay all the further proceedings in S.T.C.No.5826 of 2023 dated 23.09.2024 on the file of the learned FTC II Metropolitan Magistrate Allikulam, pending disposal of the Criminal Revision.

For Petitioner : Mr.D.Parventhan

For Respondent : Mr.B.Damodaran



ORDER

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The Criminal Revision Case has been filed challenging the order dated 23.09.2024 made in CrI.M.P.SR.No.2403 of 2024 on the file of the learned Metropolitan Magistrate, FTC-II, Allikulam, Chennai, dismissing the petitioner's application filed under Section 309 of the Cr.P.C., for advancing the hearing of the case.

2. The petitioner sought for advancement of the hearing of the case from 26.09.2024 (when the case was posted for judgment) to 19.09.2024 on the ground that the petitioner, who is facing trial for the offence under Section 138 of the Negotiable Instruments Act would examine himself as a defence witness to explain certain facts. The trial Court by a docket order dated 23.09.2024, dismissed the said petition stating that no reasons have been assigned in the advance hearing petition.

3. The petitioner had challenged the said order and this Court admitted the revision after recording the submissions of the petitioner and vide common order made in CrI.M.P.Nos.14587 & 14588 of 2024 in CrI.R.C.No.1772 & 1773 of 2024, directed the trial Court not to deliver judgment in the above case, pending disposal of the above revision.



4. The learned counsel for the petitioner would submit that the petitioner has to examine himself to rebut the statutory presumption and that right cannot be denied. The learned counsel therefore sought for setting aside the impugned order and for liberty to file a petition to examine the petitioner as a defence witness.

5. The learned counsel for the respondent *per contra* submitted that the petitioner has been resorting to this delaying tactics by filing such petitions repeatedly; that the petitioner filed a petition under Section 311 of the Cr.P.C., for summoning certain witnesses and the same was dismissed by the order dated 27.06.2024 in CrI.M.P.No.34342 of 2024; that the petitioner filed a petition for recall of PW1, which was also dismissed by the order dated 03.09.2024 in CrI.M.P.No.48950 of 2024; and that the impugned order therefore is justified and prayed for dismissal of the revision.

6. Heard the learned counsel on either side and perused the materials available on record.

7. It is seen from the records and the submissions of the learned



counsel for the respondent that the petitioner had sought for

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cross-examination of PW1 earlier and the same was dismissed, since the petitioner had already cross examined PW1 and sufficient cause was not shown for recalling PW1. The petitioner had also sought for examination of a bank officer, which was also dismissed on 03.09.2024 since, the petitioner had no valid reason to summon the bank officer. After dismissal of all the applications, the case was posted for judgment on 26.09.2024.

8. The petitioner had filed the petition to advance the hearing to 19.09.2024 for the reason that the petitioner is likely to be examined as a defence witness. It is also stated that the petitioner had also filed a petition under Section 311 of the Cr.P.C., to reopen the defence side witness, which is yet to be numbered.

9. The reading of the petition to advance the hearing would show that there is no clarity in the petition as to what the petitioner intends to do by reopening the defence side evidence. During the course of the hearing, before this Court, the learned counsel for the petitioner would



submit that the petitioner intends to examine himself as DW1.

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10. In the light of the said submission, this Court is of the view that one final opportunity can be given to the petitioner to examine himself as DW1. Therefore, for that limited purpose, the order passed in Crl.M.P.Sr.No.2403 of 2024 in STC No.5826 of 2023 dated 23.09.2024 on the file of the learned FTC II Metropolitan Magistrate Allikulam, at Chennai, is set aside and the petitioner shall examine himself as defence witness within a period of three weeks from the date of receipt of a copy of this order and on the same day, the respondent shall cross-examine the petitioner and the learned Magistrate may deliver judgment soon thereafter. The petitioner shall not file any other application to delay the proceedings and if any such application is filed, the learned Magistrate may not entertain the said application.

11. With the above observations, the Criminal Revision Case stands allowed. Consequently, the connected Criminal Miscellaneous Petition is closed.



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Issue order copy today.

Index: Yes/No

Speaking/Non-speaking order

Neutral citation: Yes/No.

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To

The Metropolitan Magistrate,
FTC II, Allikulam, at Chennai



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SUNDER MOHAN, J.

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Pre-delivery order in
CrI.R.C.No.1773 of 2024

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