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Crl.RC No.1910 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2024

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.R.C.No.1910 of 2024

and

Crl.M.P.No.15596 of 2024

S.S.Sheik Ajmul

... Petitioner/Accused

Vs.

Shankars Farm

Prop. Mr.N.Ravishankar,

Power of Attorney

Mr.A.S.Dhananjayam

... Respondent / Complainant

PRAYER: Criminal Revision Case filed under Sections 438 r/w 442 of the BNSS, to call for the records in Crl.M.P.No.13183 of 2024 in C.C.No.2257 of 2008 on the file of the IV Metropolitan Magistrate, (Fast Track Court) George Town, at Chennai dated 29.10.2024 and set aside the same.

For Petitioner : Mr.C.Emalias
for Mr.R.Sasikumar

For Respondents : Mr.A.Jayachandran
for Mr.A.R.Nixon

ORDER

The Criminal Revision Case has been filed challenging the order dated 29.10.2024 passed by the learned IV Metropolitan Magistrate (Fast



Crl.RC No.1910 of 2024

Track Court), George Town, Chennai in Crl.M.P.No.13183 of 2024 in C.C.No.2257 of 2008, dismissing the petitioner's application for summoning five witnesses to establish the case of the petitioner.

2. The petitioner is facing trial in C.C.No.2257 of 2008 for the alleged offence under Section 138 of the Negotiable Instruments Act. The complaint is that the petitioner had issued a cheque for Rs.12 Lakhs towards discharge of his liability to the respondent/complainant and when the said cheque was presented for collection, it was dishonoured and in spite of statutory notice, the petitioner did not make any payment.

3. The petitioner filed Crl.M.P.No.13183 of 2024 seeking to summon five witnesses. However, the said petition was dismissed with cost as neither the petitioner nor the respondent were present and that the petition has been filed to drag on the case. Thereafter, the case was listed on 08.11.2024 for judgment.

4. The learned counsel for the petitioner would submit that the examination of these witnesses, is absolutely essential for rebutting the statutory presumption; that it was not intended to delay the proceedings;



and that he would produce all witnesses within a stipulated time, so that the trial does not get delayed any further.

5. The learned counsel for the respondent *per contra* submitted that though the petition has been filed to delay the proceedings, on instructions, would submit that the petitioner may be permitted to produce the witnesses and examine them within a stipulated time period and time may be fixed for conclusion of the trial, since the case is pending from 2008.

6. The petitioner while challenging the dismissal had only produced the clean copy of the 'Diary Status' made in the e-Courts website and did not produce the order passed by the learned Magistrate and submitted that though copy application was filed, the learned Magistrate neither uploaded nor issued the certified copy.

7. Therefore, this Court while granting interim stay of the order dated 29.10.2024, directed the Registry to call for a report from the learned Magistrate as to whether the said order has been uploaded and if not, to state as to why the said order was not uploaded and certified copy



Crl.RC No.1910 of 2024

was not issued to the petitioner. It is informed by the Registry that they are yet to receive the reply.

8. This Court, therefore is not inclined to wait for the report from the learned Magistrate for disposal of the revision, as the case is pending from 2008. However, since the burden is on the petitioner to rebut the statutory presumption, one opportunity can be given to the petitioner to examine the witnesses, which can be done within a time frame.

9. Accordingly, the order dated 29.10.2024 made in Crl.M.P.No.13183 of 2024 in C.C.No.2257 of 2008, on the file of the learned IV Metropolitan Magistrate, Fast Track Court, George Town, Chennai, is set aside and the petitioner is permitted to examine the witnesses within a period of four weeks from the date of receipt of a copy of this order and the trial Court shall conclude the proceedings within a period of four weeks, thereafter. The Criminal Revision Case stands disposed of, accordingly. Consequently, the connected Criminal Miscellaneous Petition is closed.

10. At the same time, this Court has to necessarily ascertain



Crl.RC No.1910 of 2024

whether the copy of the order dated 29.10.2024 has been uploaded or not. Hence, list the case for the report of the learned Magistrate on 18.12.2024.

11. It is further represented that since there is a change in the counsel for the petitioner, the petitioner made a request for the certified copy of the complaint and other relevant papers and the said request was rejected. The learned Magistrate shall also issue the certified copies of the complaint and other papers to the petitioner, on payment of the requisite Court Fee.

25.11.2024

Index: Yes/No
Speaking/Non-speaking order
Neutral citation: Yes/No.
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Crl.RC No.1910 of 2024

SUNDER MOHAN, J.

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To

The IV Metropolitan Magistrate,
(Fast Track Court),
George Town, Chennai.

Crl.R.C.No.1910 of 2024

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CrI.RC No.1910 of 2024