



CrI.O.P.No.29028 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2024

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.O.P.No.29028 of 2024

and

CrI.M.P.No.16238 of 2024

1. N.Ravisankar

2. Indhumathi

... Petitioners

Vs.

D.Sugumar

... Respondent

Prayer: Criminal Original Petition filed under Section 528 of B.N.S.S. to set aside the order dated 05.09.2024 made in CrI.M.P.No.1194 of 2024 in C.C.No.252 of 2017 on the file of the learned Judicial Magistrate No.1, Udumalpet and to allow the above Criminal Original Petition.

For Petitioner : Mr.A.Sathishkumar

For Respondent : Mr.N.Umapathi



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ORDER

This Criminal Original Petition has been filed challenging the order dated 05.09.2024 made in CrI.M.P.No.1194 of 2024 in C.C.No.252 of 2017 on the file of the learned Judicial Magistrate No.1, Udumalpet.

2. The case of the petitioner is that the respondent has filed a complaint against the petitioner under Section 200 Cr.P.C. for the offence under Section 138 of the Negotiable Instruments Act in C.C.No.252 of 2017 before the learned Judicial Magistrate No.1, Udumalpet. After completion of evidence on the side of the complainant and after completion of questioning under Section 313 (1)(b) Cr.P.C., summons were issued to the defence side witnesses. But the same were returned as unclaimed and addressee cannot be located. Thereafter, the petitioner filed a petition before the Magistrate under Section 311 Cr.P.C. in CrI.M.P.No.1194 of 2024 to reopen the defendant side witness and to summon the witnesses but, the same was dismissed by order dated 05.09.2024.



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Challenging the same, the petitioner is before this Court by way of filing this petition.

3. The learned counsel for the petitioner submitted that when the summons were sent to the witnesses, the witnesses were engaged in election duty and therefore, the summons could not be served on them and subsequently, the defence side evidence was closed. Now the witnesses are very much available in the address mentioned in the summons whereas, the learned Magistrate failed to consider the change of circumstances and without application of mind, simply dismissed the petition. He further submitted that the said witnesses are material witnesses to prove his defence.

4. The learned counsel for the respondent submitted that the petitioner had not given any reason for invoking Section 311 Cr.P.C. and therefore, the learned Magistrate rightly dismissed the petition and that there is no merit in this petition.

5. Heard both sides and perused the materials available on record.



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6. Admittedly, the petitioner has been arrayed as an accused in C.C.No.252 of 2017 on the file of the Judicial Magistrate No.1, Udumalpet.

According to the petitioner, after examination of the complainant's side evidence, the petitioner had taken summons for examination of witnesses on his side. But the summons could not be served on the witnesses since they were engaged in election duty and therefore, the petitioner could not examine those witnesses. Now the witnesses are very much available and therefore, he filed the petition invoking Section 311 Cr.P.C.

7. In view of the submissions made by the learned counsel for the petitioner and in the interest of justice, in order to give an opportunity to the petitioner to examine the witnesses on his side, the order passed by the learned Judicial Magistrate No.1, Udumalpet, in CrI.M.P.No.1194 of 2024 dated 05.09.2024 in C.C.No.252 of 2017 is set aside.

8. The learned Magistrate is directed to re-issue summons to the said witnesses and if the summons are served and the witnesses are present before



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the Court, the petitioner is directed to examine them on the same day and the learned Magistrate shall give an opportunity to the respondent to cross examine those witnesses. Further, since the C.C.No.252 of 2017 is pending from the year 2017, the learned Magistrate is directed to dispose of the case within a period of two months i.e. on or before 30.01.2025 in accordance with law after giving opportunity to both the parties.

9. With the above directions, this Criminal Original Petition is disposed of. Consequently, connected Miscellaneous Petition is closed.

03.12.2024

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

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Note: Issue order copy on 04.12.2024.

To

The Judicial Magistrate No.1,
Udumalpet

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P.VELMURUGAN. J.

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