



Crl.O.P.(MD).No.2095 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 20.02.2024

CORAM:

THE HONOURABLE Mr. JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.O.P.(MD).No.2095 of 2024

and

Crl.M.P.(MD).No.1592 of 2024

Amutha

... Petitioner

Vs.

Chandra

...Respondent

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to set aside and call for records in Crl.M.P.No.8368 of 2023 in S.T.C.No.58 of 2022 on the file of the learned Judicial Magistrate (Fast Track) Court, Thoothukudi and set aside the order dated 27.11.2023.

For Petitioner : Mr.S.Muthu Malai Raja

ORDER

The learned Counsel for the Petitioner submitted that the Petitioner had filed this petition seeking to set aside the order of the learned Judicial Magistrate (Fast Track Court), (Magisterial Level), Thoothukudi dated 27.11.2023 in Crl.M.P.No.8368 of 2023 in Crl.M.P.No.6823 of 2023 in S.T.C.No.58 of 2022.



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2. It is the submission of the learned Counsel for the Petitioner that the Petitioner is the accused in S.T.C.No.58 of 2022, a private complaint filed under 138 of Negotiable Instrument Act. When the complainant had deposed evidence as P.W.1, the accused did not cross examine P.W.1. Subsequently, she filed a petition in Cr.M.P.5623 of 2023 under Section 311 Cr.P.C and the same was allowed by imposing cost of Rs.3000, failing which, the petition will be automatically dismissed without reference to the Court. Due to her ailment, she could not comply with the order of the Court. Hence, she filed another petition in Cr.M.P.No.8368 of 2023 and the same was dismissed as per order, dated 27.11.2023. The learned Counsel for the Petitioner seeks to set aside the same and afford an opportunity to the Petitioner to cross examine P.W.1, otherwise her valuable defence will be lost which will be ended up in miscarriage of justice.

3. On perusal of the order, it is found that the learned Judicial Magistrate on the basis of the records available before this Court, stated that the Complainant was examined on 09.12.2022. Subsequently, on 04.05.2023, when the accused was examined under Section 313 (1)(a) Cr.P.C., the accused denied the incriminating evidence against her and sought time for examination of



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defence witnesses. Therefore, the case was adjourned to 05.09.2023.

Subsequently, the petition filed under Section 311 Cr.P.C seeking to recall the Complainant as P.W.1 was allowed on payment of cost of Rs.3000/- by the learned Judicial Magistrate. Subsequently, it was adjourned to different hearing dates. After five adjournments, another petition had been filed, once again seeking to recall P.W.1. Therefore, the learned Judicial Magistrate in the order dated 27.11.2023, submitted that the Court cannot extend its leniency to the accused who have not co-operated with the Trial Court and filed petitions under Section 311 Cr.P.C only to protract the proceedings.

4. The cases under Section 138 of Negotiable Instruments Act which are borne out of records, stand apart from other criminal cases which are all based on oral evidence. The cases under Section 138 of NI Act are based on documentary evidence and bank transaction. Therefore, the accused invariably takes time to recall P.W.1/Complainant. Since there is a delay in disposal of Section 138 Act cases, the High Court on consultation with the State Government created Special Court as Fast Track Court (Magisterial Level) to deal exclusively with Section 138 Negotiable Instruments Act. Still the cases are delayed due to the conduct of the accused in protracting the proceedings. Here, this is the glaring example of the accused taking the right of the defence



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to cross examine beyond reasonable limit, even though the Court had shown its leniency by affording opportunity and imposing cost. The learned Judicial Magistrate had observed that even after the petition under Section 311 Cr.P.C was allowed by imposing cost, the complainant was continuously present in the Court as P.W.1, but was not cross-examined for five continuous hearing dates. Therefore, it is not a fit case to show leniency under the discretion of the High Court exercising extraordinary powers under Section 482 Cr.P.C, thereby, the well reasoned order of the learned Judicial Magistrate to be set aside.

5. Hence, this Criminal Original Petition is dismissed, with a direction to the Petitioner to co-operate with the Trial Court. Consequently, connected miscellaneous petition is closed.

20.02.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr



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To

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- 1.The Judicial Magistrate (Fast Track) Court,
Thoothukudi.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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SATHI KUMAR SUKUMARA KURUP, J.

Nsr

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