



CrI.O.P.(MD) No.3680 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.03.2024

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P (MD) No.3680 of 2024

M.Ramesh

...Petitioner

VS

**1.M/S.Nellai Department Stores,
through its Partners,
5/1, STC Road,
Perumalppuram,
Tirunelveli 627 007.**

2.P.Mariraj

3.Jeyaraj

4.Subramanian

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying, to direct the learned Fast Track Court No.1, (JM Level), Madurai to dispose of the case in STC.No.227 of 2022 within a stipulated time that may be fixed by this Court.

For Petitioner : Mr.Niranjan S.Kumar



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ORDER

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The learned Counsel for the Petitioner submits that the Petitioner is the Complainant in STC.No.227 of 2022 on the file of the learned Judicial Magistrate, Fast Track Court No.1 (Magisterial Level), Madurai. It is the contention of the learned Counsel for the Petitioner that the Complainant had let in evidence at the earliest. From the date the accused appeared, he had been protracting the proceedings. The learned Judicial Magistrate, Fast Track Court No.1 (Magisterial Level), Madurai had granted sufficient opportunities to the accused to cross-examine the witnesses. Still, the accused played dilatory tactics by changing the Counsel and by filing petitions under Section 311 Cr.P.C., Even though the Complainant magnanimously had considered the request of the accused for re-calling and cross-examination of the witnesses, the accused had been indulging in the very same activities by changing the Counsel often and after change of Counsel filing fresh petitions. Therefore, he seeks direction against the learned Judicial Magistrate, Fast Track Court No.1 (Magisterial Level), Madurai to dispose of the case in STC.No.227 of 2022.



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2.The learned Counsel for the Petitioner invited the attention of this Court to the status of the case uploaded on the website of the Court, wherein it is found that on various occasions, the accused had filed petitions under Section 311 Cr.P.C., after changing the Counsel. The cross-examination of the Petitioner herein as P.W1 was conducted against the rulings of the Hon'ble Supreme Court in the case of ***Vinod Kumar Vs. State of Punjab*** reported in ***CDJ 2015 SC 115***. The learned Counsel for the Petitioner relied on the ruling of the Hon'ble Supreme Court in ***Indian Bank Association and others Vs. Union of India and another***, wherein it had been stated as under:-

“21.Many of the directions given by the various High Courts, in our view, are worthy of emulation by the Criminal Courts all over the country dealing with cases under Section 138 of the Negotiable Instruments Act, for which the following directions are being given :-

DIRECTIONS:

1) Metropolitan Magistrate/Judicial Magistrate (MM/JM), on the day when the complaint under Section 138 of the Act is presented, shall scrutinize the complaint and, if the complaint is accompanied by the affidavit, and the affidavit and the documents, if any, are found to be in order, take cognizance and direct issuance of summons.



2) MM/JM should adopt a pragmatic and realistic approach while issuing summons. Summons must be properly addressed and sent by post as well as by e-mail address got from the complainant. Court, in appropriate cases, may take the assistance of the police or the nearby Court to serve notice to the accused. For notice of appearance, a short date be fixed. If the summons is received back un-served, immediate follow up action be taken.

3) Court may indicate in the summon that if the accused makes an application for compounding of offences at the first hearing of the case and, if such an application is made, Court may pass appropriate orders at the earliest.

4) Court should direct the accused, when he appears to furnish a bail bond, to ensure his appearance during trial and ask him to take notice under Section 251Cr.P.C. to enable him to enter his plea of defence and fix the case for defence evidence, unless an application is made by the accused under Section 145(2) for re- calling a witness for cross-examination.

(5) The Court concerned must ensure that examination-in-chief, cross-examination and re-examination of the complainant must be conducted within three months of assigning the case. The Court has option of accepting affidavits of the witnesses, instead of examining them in Court. Witnesses to the complaint and accused must be available for cross-examination as and when there is direction to this effect by the Court.



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22.We, therefore, direct all the Criminal Courts in the country dealing with Section 138 cases to follow the above-mentioned procedures for speedy and expeditious disposal of cases falling under Section 138 of the Negotiable Instruments Act.”

3. Therefore, the grant of opportunities to the accused, who is playing dilatory tactics with the Court, had to be curtailed. Therefore, he seeks direction against the learned Judicial Magistrate, Fast Track Court No.1 (Magisterial Level), Madurai. What had been submitted by the learned Counsel for the Petitioner and the case status uploaded on the web-site of the Court indicate that repeatedly the accused had been protracting the proceedings.

4. Cases under Section 138 of Negotiable Instruments Act, 1881 stand on a different footing from the other cases under the category of criminal cases. Since it is a case borne out of records, the accused is facing trial or aware of the consequences. Therefore, they indulge in such activities. It is for the learned trial Judge to curtail the conduct of the accused by



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appropriate orders. The learned Judicial Magistrate, Fast Track Court No.1 (Magisterial Level), Madurai as trial Judge shall be assertive following the procedures under the Code of Criminal Procedure and also as per the dictum laid down by the Hon'ble Supreme Court regarding trial Judges. Even though the accused has right to change his Counsel often, the learned trial Judge can rely on the records of the Court to control the Court proceedings. He/she is the Presiding Judge of the Court to control the Court proceedings and no one can interfere with it. Therefore, it is for him/her to pass appropriate orders, so that the case will be disposed off within a reasonable period of one or two months from the date of commencement of recording of evidence.

5.Here, the learned Judicial Magistrate, Fast Track Court No.1 (Magisterial Level), Madurai had granted long rope. In physics theory, there are two principles, elastic and plastic. There are no perfect plastic and perfect elastic bodies. The same principle applies in Court procedures also. The learned Judge shall dispose of the case, warning the accused of the consequences. If the accused does not co-operate, the learned Judge is within his/her powers to detain them in prison till the trial concludes. If the



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learned Counsel for the accused co-operate by advancing arguments, the learned Judge shall dispose of the case in STC.No.227 of 2022 within a reasonable period of two months. This guidance may be considered in future also for another cases.

With the above directions, this Criminal Original Petition is disposed of.

Internet: Yes./No
Index: Yes/No
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20.03.2024

To

The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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SATHI KUMAR SUKUMARA KURUP, J.

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