



Crl.O.P.(MD)No.8551 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.11.2024

CORAM

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.(MD)No.8551 of 2024
and
Crl.M.P.(MD)No.5861 of 2024

K.Shanmugam

... Petitioner

Vs.

S.Muthukumar

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to set aside the order dated 05.12.2023, passed in Crl.M.P.No.11041 of 2023 in S.T.C.No.202 of 2020, on the file of the Judicial Magistrate Court No.I, Padmanabapuram, Kanniyakumari District, by allowing this Criminal Original Petition.

For Petitioner : Mr.N.Pragalathan

For Respondent : Mr.M.Senthilkumar

ORDER

This order has to be read in conjunction with and in continuation of earlier proceedings made in the previous listing on 12.06.2024, which



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reads as follows:-

"The petitioner is an accused in S.T.C.No.202 of 2020 on the file of the Judicial Magistrate Court No.I, Padmanabapuram, Kanyakumari District, for the offence under Section 138 of the Negotiable Instruments Act.

2. It appears that the case is pending from the year 2020. The plaintiff/PW1 was examined on 16.06.2022. Though an opportunity was provided to the petitioner, he failed to cross examine P.W.1. Now, the case is posted for arguments. At this stage, the petitioner has filed an application in Crl.M.P.No. 11041 of 2023 to recall P.W.1 for the purpose of cross examination. Considering the conduct of the petitioner in not taking any steps to cross examine P.W.1 from the year 2022, the trial Court, by order dated 05.12.2023 has dismissed the said application.

3. Considering the same, this Court is not inclined to interfere with the dismissal order passed by the trial Court. The petitioner can make out his defence in the complaint which is pending against him in STC No.202 of 2020. However, this Court is inclined to provide one more opportunity to the petitioner.

4. The learned counsel for the petitioner submits that the petitioner agrees to pay a sum of Rs.25,000/- as cost, for recalling P.W.1 and also undertakes that he will cross examine P.W.1 on the same day when he is available for the cross



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examination.

5. Since the case is posted for arguments and in order to provide one opportunity to the complainant also, post this matter on 20.06.2024 under the caption "For Orders".

6. The petitioner is directed to serve notice on the complainant's counsel, who is appearing before the trial Court and to file a proof of service on or before 20.06.2024.

7. Post the matter on 20.06.2024."

2. The petitioner/accused in S.T.C.No.202 of 2020 is facing trial for the offence under Section 138 of the Negotiable Instruments Act. At the penultimate stage of the case, during the arguments, the petitioner filed a petition under Section 311 Cr.P.C. seeking to cross-examine P.W.1, which was dismissed by the trial Court. The petitioner has now filed the present petition against the dismissal.

3. This Court had considered the petitioner's plea and passed a conditional order, directing the petitioner to pay a cost of Rs.25,000 for recalling P.W.1, and to cross-examine the witness on the same day of his appearance. The order was passed on 12.06.2024, and the case was scheduled to be listed on 20.06.2024. However, for some reason, the case was not listed thereafter.



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4. Today, when the case was listed, the learned counsel for the petitioner sought further time to comply with the conditional order passed on 12.06.2024.

5. The learned counsel for the respondent/complainant submitted that this is part of the regular tactics of the petitioner, who continuously files one petition after another, or gives reasons to delay the proceedings. The summary trial case was initiated in 2020, and for the past four years, the petitioner has been successful in prolonging the case. At this stage, only arguments remain, but due to the present petition, judgment could not be rendered. The respondent contended that the petitioner's intention is clear, and is likely aimed at further protracting the proceedings and causing unnecessary harassment. This delay defeats the very purpose of Section 138 of the Negotiable Instruments Act.

6. Considering the submissions, this Court finds that despite receiving a favourable order on 12.06.2024, the petitioner has failed to pay the cost of Rs.25,000 to the respondent/complainant, who has been



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appearing before the Court since that date. The petitioner has failed to provide any valid reason for this non-compliance.

7. In light of the above, this Court is not inclined to further extend the time for compliance. Accordingly, the Criminal Original Petition is dismissed, and the order passed by the trial Court is confirmed. Consequently, connected Miscellaneous Petition is closed.

8. Now, the case is at the argument stage. The trial Court is directed to hear the arguments of both parties, proceed with the case towards its logical conclusion, and pass judgment within one month from today.

14.11.2024

NCC : Yes / No

Index : Yes / No

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Note:- Issue order copy on **18.11.2024**.

To

The Judicial Magistrate No.I,
Padmanabapuram,
Kanniyakumari District.



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M.NIRMAL KUMAR, J.

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Order made in
CrI.O.P.(MD)No.8551 of 2024

Dated: 14.11.2024