



Crl.O.P(MD).No.18076 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.11.2024

WEB COPY

C O R A M

THE HONOURABLE **MR. JUSTICE M. NIRMAL KUMAR**

Crl.O.P(MD).No. 18076 of 2024 and
Crl.M.P(MD).No.11175 of 2024

Suresh

.. Petitioner

Vs.

Arockia Selvi

... Respondent

Prayer: Criminal Original Petition filed under Section 528 BNSS, 2023 to call for the records and set aside the order, dated 12.09.2024 made in Crl.M.P.No.2271 of 2024 in C.C.No.59 of 2023 on the file of the learned Judicial Magistrate, Fast Track Court, Karaikudi.

For Petitioner : Mr.A.Balaji

For Respondent : Mr.P. Aju Tagore

ORDER

This Criminal Original Petition has been filed to call for the records and set aside the order, dated 12.09.2024 made in Crl.M.P.No.2271 of 2024 in C.C.No.59 of 2023 on the file of the learned Judicial Magistrate, Fast Track Court, Karaikudi.

2. The petitioner herein is the accused in the complaint filed by

the respondent / complainant for the offence under Section 138 of



Negotiable Instruments Act in C.C.No.59 of 2023 on the file of the Judicial Magistrate, Fast Track Court, Karaikudi. The petitioner has filed a petition in Crl.M.P.No.2271 of 2024 in C.C.No.59 of 2023 before the trial Court to recall the evidence of PW.1 and the same was dismissed by the trial Court on 19.09.2024. Against which the present petition is filed.

3. The complaint against the petitioner that he has borrowed a sum of Rs.13,00,000/- from the respondent / complainant for his family expenses and to start business for petitioner's wife and for which, the petitioner had also issued a promissory note and cheque bearing No. 458410, dated 30.01.2023. According to the petitioner, he has not borrowed any amount from the complainant.

4. The petitioner has got a good defence in his case which he can only established by cross examining of PW.1. However, the petitioner is facing trial for the offence under Section 138 of Negotiable Instruments Act, wherein statutory presumption is necessarily as against the petitioner. The petitioner could probabalised his defence by way of cross examination or bringing other materials. The primary requirement is that he has to cross examine the complainant to prove his defence. The trial Court dismissed the petition for the reasons that the petitioner had not cross



examined PW.1. This is a private complaint wherein the petitioner and the complainant has to necessarily appear before the trial Court and there is no harassment to the petitioner by the respondent.

5. The learned counsel appearing for the petitioner submitted that when the case was listed for cross examination there was indefinite boycott of the Advocates and for that reason cross examination could not be done. He would further submit that veracity of the case can be tested only by way of cross examination of PW.1 otherwise the petitioner will be denied his fundamental right.

6. The learned counsel appearing for the respondent strongly opposed the petitioner's contention and submit that PW.1 was cross examined as chief on 18.07.2023 and on the same day the exhibits have also been marked. Though the petitioner's counsel was present he had cross examined and reported no cross. Therefore, on 14.08.2023, the case was posted, again the petitioner had not cross examined the respondent. Thereafter, on 12.12.2023, the petitioner herein has filed a petition under Section 311 Cr.P.C., to cross examine the respondent and the same was allowed, but, no cross examination was done from 29.12.2023 to 25.06.2024 and therefore, the trial Court closed the evidence again on



25.06.2024. Again, the petitioner herein has filed a petition under Section 311 Cr.P.C., and the same was allowed and thereafter, for two months no cross examination was done and therefore, prays for dismissal of the petition.

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

8. The respondent had given a sum of Rs.13,00,000/- to the petitioner, for which the petitioner herein had given a cheque in discharge of the said liability. It is only delay in tactics adopted by the petitioner and the denial also disputing the case under Section 138 of NI Act. The learned counsel for the petitioner submits that to show his bonafide the petitioner is ready and willing to deposit a sum of Rs.1,00,000/- before the trial Court.

9. Considering the said submission and finding that the complainant so far not examined in this case the statutory presumption is against the accused. only through the cross examination of PW.1, the veracity of the witness can be tested. Hence, this Court is inclined to set aside the order, dated 12.09.2024 made in Crl.M.P.No.2271 of 2024 in



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C.C.No.59 of 2023 on the file of the learned Judicial Magistrate, Fast Track Court, Karaikudi on condition that the petitioner shall deposit a sum of Rs.1,00,000/- (Rupees One Lakh only) to the credit of C.C.No.59 of 2023 on the file of the learned Judicial Magistrate, Fast Track Court, Karaikudi on or before 19.11.2024. On such deposit, the Court below is directed to list the matter on 20.11.2024 and on that day, the petitioner shall cross examine PW.1 and complete the Cross Examination on the same day. If for any reason, the petitioner fails to cross examine PW.1 on the date of appearance, the petitioner shall forfeit her right to recall PW.1 for cross examination in future.

10. Accordingly, this Criminal Original Petition is allowed accordingly. Consequently, the connected Miscellaneous Petition is closed.

07.11.2024

trp

Index : yes / No

Internet: yes/No

Note : Issue order copy on 12.11.2024

To

Judicial Magistrate, Fast Track Court, Karaikudi.



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M. NIRMAL KUMAR, J.,

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