



Crl.O.P.(MD)No.20463 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.11.2024

CORAM

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.(MD)No.20463 of 2024
and Crl.M.P(MD).Nos.12644 and 12645 of 2024

S.Jerald Raja

: Petitioner

Vs.

Arockiyasamy

: Respondent

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, to set aside the order dated 05.11.2024 made in Crl.M.P.No.1157 of 2024 in CC.No.38 of 2018 on the file of the District Munsif cum Judicial Magistrate Court, Natham, Dindigul District.

For Petitioner : Mr.B.Prahalad Ravi

ORDER

The petitioner, who is the complainant in CC.No.38 of 2018 filed under Section 138 of Negotiable Instrument Act against the respondent, had filed this petition to set aside order made in Crl.M.P.No.1157 of 2024 in CC.No.38 of 2018 on the file of the District Munsif cum Judicial



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Magistrate Court, Natham, Dindigul District, whereby the trial Court by order dated 05.11.2024 permitted the respondent/accused to recall P.W.1 to P.W.2 for cross-examination on payment of costs of Rs.2,000/-.

2. The contention of the petitioner is that the case under Section 138 of the Negotiable Instrument Act is of the year 2018 and the same is now at the penultimate stage, at this stage, permitting the respondent/ accused to cross-examine P.W.1 and P.W.2 would cause further delay and drag on the proceedings. Earlier, the respondent was granted opportunity in Crl.M.P.No.1067 and 1068 of 2022 to reopen and recall P.W.1 and P.W.2 with condition. Since non-compliance of the respondent/accused, the same was closed. In the meanwhile, the respondent/accused had also filed Crl.O.P(MD).No.10092 of 2024 to transfer the case and the same was dismissed. The petitioner/complainant had filed Crl.O.P(MD).No.20732 of 2023 seeking direction to conclude the trial in CC.No.38 of 2018 and this Court by order dated 21.11.2023 finding that the trial has been kept pending for more than 5 years, without any substantial progress and at the instance of respondent/accused getting adjournment for the one reason and other, directed the trial Court to complete the trial within a period of three months. Again, almost one year thereafter, now, the present petition has



been filed to recall P.W.1 and P.W.2 for cross-examination. In this case, admittedly, P.W.1 and P.W.2 are not cross-examined so far. The respondent/accused is facing trial under Section 138 of the Negotiable Instruments Act. The statutory presumption is against the respondent. Through cross-examination, the veracity of the complainant's witnesses (P.W.1 and P.W.2) can be contested, thereby, the respondent can probabilize his defense.

3. The learned counsel for the petitioner submitted that P.W.1 and P.W.2 are brothers and they are ready to their cross-examination on the next hearing date on 26.11.2024. But, since the petitioner's mother is admitted in Meenakshi Mission Hospital and taking treatment, both the petitioner and his brother would appear before the trial Court on 02.12.2024.

4. In view of the above, the learned District Munsif cum Judicial Magistrate, Natham, Dindigul District, to ensure the payment of cost of Rs.2,000/- to the petitioner on the next hearing date i.e., 26.11.2024. Thereafter, list the case on 02.12.2024, on which date, the petitioner and his brother shall appear and the respondent/accused, without seeking



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further adjournment, to cross-examine them. If the respondent adopt any further dilatory tactic, the evidence of P.W.1 to P.W.2 would be closed and the case can be posted to next stage, in any event, the trial Court to conclude the trial in CC.No.38 of 2018 on or before 02.01.2025.

5. With the above direction, this Criminal Original Petition is disposed of. Consequently, connected Miscellaneous Petitions are closed.

22.11.2024

NCC : Yes/No

Index : Yes / No

Rmk

Note : Issue order copy on 25.11.2024

To

- 1.The District Munsif cum Judicial Magistrate,
Natham, Dindigul District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.NIRMAL KUMAR,J.

Rmk

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