



CRL MP(MD) No.12789 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Wednesday, the Twenty Seventh day of November Two Thousand and Twenty Four

PRESENT

The HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

CRL MP(MD) No.12789 of 2024

IN

CRL OP(MD) No.20710 of 2024

S.ANNAKAMU

... PETITIONER/SOLE ACCUSED

Vs

SHANMUGASUNDARA PANDIAN

(REP BY HIS POWER AGENT)

GANESAN

... RESPONDENT/COMPLAINANT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to dispense with the personal appearance of the petitioner before the learned Judicial Magistrate, Fast Track Court No.1, Madurai in STC No.326/2024, till the disposal of the main Criminal Original Petition.

Prayer in CRL OP(MD). 20710/ 2024 :

To call for the records pending on the file of the Learned Judicial Magistrate, Fast Track Court No.I, Madurai in STC No.326/2024, and Quash the same.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of MR.NIRANJAN S.KUMAR, Advocate for the petitioner, while admitting the Criminal Original Petition, the court made the following order:-



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The learned counsel for the petitioner submits that the petitioner, a lady facing trial under Section 138 of the Negotiable Instruments Act, 1881, is a joint owner of the property along with her husband. The petitioner had entered into an agreement with the respondent/complainant for their pharmaceutical business, wherein it was agreed that the respondent would make an initial payment, and after clearing the bank loan, the remaining balance would be paid. A sale agreement was also executed in this regard. However, there was a delay in the process, during which a security cheque was issued by the petitioner, which was later filled out and presented as though it was issued for the discharge of a liability.

2. The learned counsel further contended that prior to the statutory notice, the petitioner had clearly outlined the entire sequence of events in a notice sent to the respondent. Neither the statutory notice nor the rejoinder to the reply referred to the original transaction or mentioned that the cheque was issued as security. The sale has now been completed, and the property has been handed over to the respondent/complainant, making the cheque stale. Based on these circumstances, the petitioner has filed the quash application.

3. The points raised by the petitioner, based on the records, appear to be factual in nature. In any case, considering that the petitioner is a lady and the offence is technical in nature, it is pertinent to note that in the case of Bhaskar Industries



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Limited vs. Bhiwani Denim and Apparels Limited reported in (2001) 7 SCC 401, the Hon'ble Apex Court clearly held that in a Section 138 case, the personal presence of the accused need not be insisted upon unless it is absolutely necessary.

4. In view of the above, the personal appearance of the petitioner in S.T.C.No.326 of 2024, on the file of the Judicial Magistrate, Fast Track Court No.I, Madurai, is ordered to be dispensed with, on condition that she shall appear at the time of initial questioning, proceedings under Section 313 of Cr.P.C., and at the time of passing judgment and on the hearings, specifically directed by the trial Court. The petitioner is further directed to give an undertaking in the form of affidavit that she will be duly represented by a counsel on all hearing dates and that the counsel representing her will cross-examine the prosecution witnesses on the same day they are examined in chief. The petitioner shall not dispute the identity of the witnesses. The petitioner shall appear before the Court in the event her presence is insisted by the learned trial Judge for the purpose of identification. If the petitioner adopts any dilatorily tactics, it is open for the trial Court to insist for her appearance and deal with the petitioner in accordance with the judgment of the Hon'ble Supreme Court in the case of State of Uttar Pradesh vs. Shambhu Nath Singh reported in 2001 (4) SCC 667.



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5. It is made clear that the trial before the trial Court cannot be stalled by citing the above-mentioned case.

sd/-
27/11/2024

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/12/2024

Sub-Assistant Registrar (C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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TO

1 THE JUDICIAL MAGISTRATE, FAST TRACK COURT NO.I, MADURAI.

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE, MADURAI DISTRICT.

ORDER

IN

CRL MP(MD) No.12789 of 2024

IN

CRL OP(MD) No.20710 of 2024

Date :27/11/2024

RS/GSV/SAR-(06.12.2024) 4P 3C

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