



Crl.O.P.(MD)No.20595 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.11.2024

CORAM

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.(MD)No.20595 of 2024

and

Crl.M.P.(MD)No.12735 of 2024

R.Krishnamoorthy

... Petitioner

Vs.

C.Rajeshkannan

... Respondent

PRAYER : Criminal Original Petition filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, seeking to call for the records and set aside the order passed in Crl.M.P.No.2938 of 2024 in S.T.C.No.9 of 2021, dated 19.11.2024, passed by the Fast Track Court (Magisterial Level), Uthamapalayam, Theni District.

For Petitioner : Mr.S.P.Srinivasan

ORDER

The petitioner/Accused, who is facing trial in S.T.C.No.9 of 2021, a case filed by the respondent under Section 138 of the Negotiable



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Instruments Act, 1881, had filed a petition under Section 311 Cr.P.C. to examine defence side witnesses in Crl.M.P.No.2938 of 2024. The trial Court, by order dated 19.11.2024, dismissed the petition. Against this order, the petitioner has filed the present Criminal Original Petition.

2. The contention of the learned counsel for the petitioner is that the petitioner is facing a case under Section 138 of the Negotiable Instruments Act, 1881, wherein a statutory presumption is staring against the petitioner. The petitioner has not had an opportunity to cross-examine P.W.1. The trial Court had closed the evidence of P.W.1 on 11.11.2024, and thereafter, the petitioner filed a petition under Section 311 Cr.P.C. to recall P.W.1 in Crl.M.P.No.2937 of 2024. The said petition was allowed on 19.11.2024 with the condition that the petitioner pay Rs.5,000/- as costs towards the District Mediation Centre, Theni, on or before 26.11.2024. The petitioner paid the said amount and produced the receipt on 22.11.2024. Thus, the petitioner was allowed to recall and cross-examine P.W.1. However, on the same day, the present impugned order was passed, denying the petitioner the opportunity to examine defence side witnesses.



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3. The learned counsel for the petitioner submits that the trial Court's reasons for denying the examination of defence witnesses, particularly that the case was pending for arguments and that the accused's counsel was not ready when the case was posted for cross-examination of P.W.1, are not valid. The case was posted for cross-examination on 11.11.2024, but there was an advocate boycott, and the accused alone was present before the Court. On that day, the accused was questioned under Section 313 Cr.P.C., and on the same day, the evidence on the side of the defence was closed and the case was posted for arguments, which is not proper. The petitioner was not given an opportunity to provide a list of defence witnesses to be examined, and the case was proceeded with in the absence of the defence counsel.

4. Considering the above submissions and on perusal of the materials, it appears that the learned counsel for the respondent/complainant had made an endorsement suggesting that the petition be allowed, albeit with heavy costs for both Crl.M.P.Nos.2937 of 2024 and 2938 of 2024. Crl.M.P.No.2937 of 2024 was allowed, permitting the petitioner to recall P.W.1, while Crl.M.P.No.2938 of 2024



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was dismissed, denying the petitioner the opportunity to examine any defence witnesses. Both orders were passed on the same day. The respondent/complainant has endorsed the view that the petition should be allowed, provided that costs are imposed. Therefore, issuing notice to the respondent/complainant would only cause unnecessary delay, and as such, notice is dispensed with.

5. In view of the above, this Court sets aside the order dated 19.11.2024, passed by the trial Court in Crl.M.P.No.2938 of 2024. The petitioner is hereby permitted to examine the defence side evidence. This exercise is to be completed without further delay, within a period of two weeks from the date of receipt of a copy of this order.

6. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

26.11.2024

NCC : Yes / No
Index : Yes / No
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The Judge,
Fast Track Court (Magisterial Level),
Uthamapalayam,
Theni District.



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M.NIRMAL KUMAR, J.

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Order made in
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