



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2025

CORAM:

THE HON'BLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CrI.O.P.No.2797 of 2025
& C.M.P.No.1814 of 2025

M/s.Nabkisan Finance Limited
Earlier known as Agri Development Finance (Tamil Nadu) Ltd.,
Having their office at Ground Floor,
Nabard, No.48, Mahatma Ganghi Road,
Nungambakkam, Chennai – 600 034,
Rep. by its authorised signatory D.Dhanasekar
Sr.Manager (Accounts). ... Petitioner

Vs.

1.M/s.Thangatamarai Farmer Producer Company Ltd.,
18/1-33A, Mallikundam Main Road,
BSNL Office opposite,
Mecheri, Mettur Taluk,
Salem District – 636 458
Rep. by its Directors.

2.Sadaiyan Sampath

3.Amaran Sakthivel Manickam ... Respondents

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code, to set aside the order dated 12.12.2024 passed in CrI.M.P.No.63838 of 2024 in S.T.C.No.2519 of 2024 by the learned Metropolitan Magistrate, Fast Track Court II, Egmore, Allikulam.



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For Petitioner : Ms.M.Ramya

For Respondents : Mr.D.Lakshmipathy

ORDER

This Criminal Original Petition has been filed challenging the order passed by the learned Metropolitan Magistrate, Fast Track Court II, Egmore, Allikulam in Crl.M.P.No.63838 of 2024 in S.T.C.No.2519 of 2024, dated 12.12.2024 thereby dismissed the Application filed for recall of P.W.1 for the purpose of re-examination under Section 348 BNSS, 2023.

2. The petitioner is the complainant and he lodged a complaint in S.T.C. No.2519 of 2024 for the offence under Section 138 of the Negotiable Instrument Act, 1881 as against the respondents. After the examination of P.W.1, on behalf of the petitioner Ex.P1 to Ex.P4 were marked and the case was posted for questioning under Section 351 of BNSS, 2023. The petitioner filed a petition to recall of P.W.1 to mark the authorization letter of P.W.1 which was issued by the complainant. It was missed out to mark while he was examined as P.W.1 due to inadvertence. That apart, he did not examine any witness on their behalf

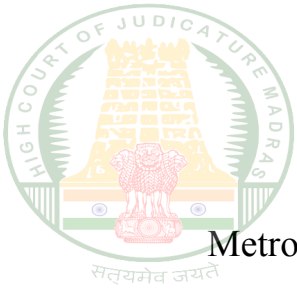


as defence witness. However, the Trial Court dismissed the said

Application on the ground that when the matter is posted for arguments, the petitioner came forward to file this petition to mark the authorisation letter by re-examining P.W.1, it would amount to fill up the lacunae and as such it was dismissed.

3. Admittedly, the respondent did not examine anybody on their behalf as a defence witness. While cross examining P.W.1, a specific proceedings was asked about the non marking of authorisation letter, thereby authorising the petitioner to file a complaint on behalf of the complainant. It is only a technical irregularity and it would not amount to fill up the lacunae, since the respondents did not even examine any witnesses on their behalf to putforth their defence. Therefore the respondent cannot take advantage on non marking of the authorisation letter. Already the petitioner was authorised and lodged a complaint and depose on behalf of the complainant. Hence, no prejudice would be caused to the respondent if the authorisation letter is marked through PW.1.

4. In view of the above, the order passed by the learned



Metropolitan Magistrate, Fast Track Court II, Egmore, Allikulam in
Crl.M.P.No.63838 of 2024 in S.T.C.No.2519 of 2024, dated 12.12.2024
cannot be sustained and liable to be set aside.

5. Accordingly, this Criminal Original Petition is allowed, the petitioner is permitted to re-examine P.W.1 to mark the authorisation letter and the first respondent is at liberty to cross examine P.W.1 in this regard on the date fixed by the Trial Court. If the petitioner failed to examine P.W.1 on that date, the Trial Court is directed to proceed with trial in accordance with law. Connected Miscellaneous Petition is closed.

18.02.2025

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order
rkp

To

The Metropolitan Magistrate,
Fast Track Court II, Egmore, Allikulam.



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G.K.ILANTHIRAIYAN, J.

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