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CrI.O.P.No.647 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2025

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.O.P.No.647 of 2025

and

CrI.M.P.No.252 of 2025

H.Sheifullah Khan

... Petitioner

Vs.

D.Ravichandran

... Respondent

Prayer: Criminal Original Petition filed under Section 528 of B.N.S.S. to allow the main petition and set aside the docket order dated 21.09.2023 and consequent order dated 31.05.2024 passed in S.T.C.No.1035 of 2023 on the file of the Judicial Magistrate-II, Cuddalore.

For Petitioner

: Mr.D.Baskar



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ORDER

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This Criminal Original Petition has been filed by the petitioner to allow the main petition and set aside the docket order dated 21.09.2023 and consequent order dated 31.05.2024 passed in S.T.C.No.1035 of 2023 on the file of the Judicial Magistrate-II, Cuddalore.

2. According to the learned counsel for the petitioner, the said docket orders passed by the learned Magistrate is against law. The Magistrate failed to see that when liability is denied, the Court cannot insist on security or surety as if the liability is admitted.

3. Heard the learned counsel for the petitioner and perused the materials available on record.

4. Since no adverse order is being passed against the respondent, notice to the respondent is dispensed with.

5. The docket order of the Magistrate dated 21.09.2023 shows that on 21.09.2023, the complainant was present and the accused was absent and since



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the matter was not settled before the lok adalath, directed the petitioner/

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accused to produce two sureties as follows:

21.09.2023

Complainant present. Accused absent. No representation. Not settled in lokadalath direct to accused produce 2 sureties call on 01.11.2023.

6. Subsequently, on several hearings, the Magistrate has directed the accused to furnish sureties. Since the accused had not furnished the sureties, at last on 31.05.2024, the Magistrate has passed the following orders directing the accused to to execute bond under Section 88 Cr.P.C. with two sureties.

31.05.2024

Complainant present. Accused present. Counsel for complainant argued that court cannot insist accused in Sec.138 NI Act to execute bond with sureties and Sec.88 of Crpc is not applicable to this case with assurance that the accused with appear on hearing without fail. Though the argument of the counsel for accused is not acceptable, his assurance



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in the open court in this case proceedings for appearance of accused in all hearings without fail is accepted. The petition filed by counsel for petitioner to recall the own order of this court is returned. As per the direction of the Ho'ble Madras High Court in "R.Sekar & another Vs State" 2024 (1) LW (Crl) 509, Magistrate shall obtain bond U/s 88 of Crpc from accused in private case (who is not on bail) to ensure his appearance and participation in trial. Hence accused is directed to execute bond U/s 88 of crpc with two sureties on 06.06.2024.

7. A reading of the docket orders shows that the Court below has not directed the petitioner/accused to deposit any amount and that the Magistrate has only directed to execute bond under Section 88 Cr.P.C. with two sureties on 06.06.2024 in order to ensure the appearance and participation of the petitioner/accused in the proceedings.

8. At the initial stage of the proceedings under Section 138 of the Negotiable Instruments Act, the accused who are appearing before the Magistrate, usually seek time or request to refer the mater to lok adalat to settle



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the matter. Thereafter, they neither settle the matter nor appear before the trial

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Court and therefore, the cases are pending for years together.

9. In this case also, the docket order dated 28.08.2023 shows that at the request of both the parties only, the matter was referred to lok adalath. Thereafter, since the petitioner/accused did not settle the matter before the lok adalath and also failed to appear before the Magistrate subsequently, such docket orders have been passed by the Magistrate. Therefore, this Court does not find any reason to set aside the docket orders.

10. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

11. The petitioner/accused is directed to execute the bond as directed by the Magistrate with two sureties.

10.01.2025

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

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To

The Judicial Magistrate-II,
Cuddalore.

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P.VELMURUGAN. J.

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