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Crl.O.P.No.30257 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2025

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.O.P.No.30257 of 2024

and

Crl.M.P.No.17102 of 2024

1. Baskaran
2. M/s.Sri Devi Stores
Rep.by its Proprietor
Baskaran
No.325, Trunk Road
Prorur, Chennai – 600 116.

... Petitioners

Vs.

R.Jothi

... Respondent

Prayer: Criminal Original Petition is filed under Section 528 of BNSS, 2023, to set aside the order passed by the Judicial Magistrate, Fast Track Court (Magistrate Level), Poonamallee, dated 05.09.2024 in Crl.M.P.No.6176 of 2024 against S.T.C.No.1055 of 2021.

For Petitioners : Mr.C.Rajan
For Respondent : Mr.K.Meenakshi Sundaram

ORDER

This Criminal Original Petition is filed to set aside the order



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passed by the Judicial Magistrate, Fast Track Court (Magistrate Level), Poonamallee, dated 05.09.2024 in CrI.M.P.No.6176 of 2024 in S.T.C.No.1055 of 2021.

2. The petitioners herein/accused are facing trial in S.T.C.No.1055 of 2021 on the file of the Judicial Magistrate, Fast Track Court (Magistrate Level), Poonamallee, for the offence under Section 138 of Negotiable Instruments Act. During the trial, the complainant herself was examined as P.W.1 on 17.08.2022 in chief, since the petitioners/accused had not come forward to cross examine the respondent/complainant, the Court below posted the case for questioning. At that time, the accused had filed a petition under Section 311 Cr.P.C and the same was allowed on 20.09.2023, thereafter, P.W.1 was cross-examined on 11.10.2023. Thus, the case was posted for defence side evidence on several dates. Since the petitioner did not come forward to cross examine defence side evidence, the defence side evidence was closed and the case was posted for orders on 20.03.2024.

3. While that being so, both the parties have filed a Joint Memo of



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Compromise stating that they are trying for settlement. However, no settlement was arrived at between the parties. Again the Court below posted the matter for orders on 22.07.2024. However, at the fag end of the trial proceedings, the petitioners/accused filed a petition in C.M.P.No.6176 of 2024 under Sections 311 and 315 Cr.P.C. to re-call and re-open the evidence and permit himself to be examined as witness. The Court below dismissed the said petition on the ground that though sufficient opportunity was given to the accused to settle the matter, the petitioners/accused only with an intention of protracting the case, mislead the respondent/complainant by giving false hope that they are ready to settle the matter, but they failed to do so.

3. Heard both sides and perused the materials available on record.

4. On a perusal of the records it is seen that the petitioners/accused did not adduce evidence and hence, the defence side evidence was closed and the matter was posted for orders. At that time, the accused had filed a petition under Sections 311 and 315 Cr.P.C and the same was dismissed.

5. It is needless to state that there is a right for the parties to defend



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their case and lead the evidence. In the case on hand, though sufficient opportunities were given to the petitioners to settle the matter, they protracted the case for one reason or the other and that the trial Court dismissed petition filed by the petitioners under Section 311 Cr.P.C. However, in order to ensure a fair trial, this Court is inclined to set aside order dated 05.09.2024 passed in Crl.M.P.No.6176 of 2024.

6. Both the parties are directed to appear before the learned Magistrate on 29.01.2025 and chief and cross examination of the petitioners/accused shall be completed on the same day itself. Thereafter, the learned Magistrate shall proceed with the case further on merits and in accordance with law within a period of one month from the date of receipt of a copy of this order.

7. With the above directions, this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petition is closed.

24.01.2025

Note: Issue Order Copy on 24.01.2025

Index : Yes/No

Neutral Citation Case : Yes/No



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Speaking Order : Yes/No
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To

The Judicial Magistrate,
Fast Track Court (Magistrate Level),
Poonamallee.



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P.VELMURUGAN, J

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