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Crl.OP.No.30858 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2025

CORAM:

THE HON'BLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**

Crl.OP.No.30858 of 2025

and

Crl.MP.No.21149 of 2025

S.Swarnalatha

...Petitioner

Vs.

B.Hemalatha

...Respondent

Criminal Original Petition filed under Section 528 of BNSS, 2023 to set aside the order passed by the learned XXXV MM, Fast Track Court-II, Egmore, Allikulam, Chennai.

For Petitioner : Mr.S.Annamalai

ORDER

This criminal original petition has been filed seeking to set aside the order dated passed by the learned XXXV Metropolitan Magistrate, Fast Track Court-II, Egmore, Allikulam, Chennai.



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2.1. Learned counsel for the petitioner submitted that the petitioner is an accused facing trial in STC.No.8435 of 2024, pending on the file of the learned Metropolitan Magistrate, Fast Track Court No.II, Egmore, Chennai for the offences under Sections 138 and 142 of the Negotiable Instruments Act, pursuant to the complaint made by the respondent/complainant alleging that the petitioner borrowed a sum of Rs.9,80,000/- and issued a cheque dated 21.10.2023 towards discharge of the said liability, which was subsequently dishonored. He further submitted that since the respondent/complainant, during the course of cross examination, admitted that she had pledged her jewels in order to mobilize the funds to lend money to the petitioner, the petitioner had earlier filed a petition under Section 94 of BNSS in Crl.MP.No.9855 of 2025, seeking to summon certain documents such as, statement of account from the Tamil Nadu Mercantile Bank in order to establish the pledging and subsequent redemption of the jewels by the de facto complainant. However, the trial Court, had dismissed the said petition, vide order dated 17.07.2025.

2.2 Aggrieved over the same, the petitioner filed a petition before this Court in Crl.OP.No.23171 of 2025. However, this Court, vide order dated



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21.08.2025, dismissed the said petition with an observation that if at all the petitioner intends to establish that there was no consideration, the petitioner ought to have at least issued a notice to the complainant to produce the relevant documents and in the event of non-production, the alternative option available to the petitioner is that she could have summoned a witness from the bank concerned and examined him in this regard and therefore, without resorting to such remedies, filing of an application under Section 94 BNSS is not maintainable.

2.3 Pursuant to the said order of this Court, the petitioner sent a notice to the learned counsel who appeared on behalf of the respondent/complainant before the trial court as well as the respondent/complainant on 22.08.2025 and 12.09.2025 respectively, seeking production of the relevant documents pertaining to pledging of jewels, statement of accounts, Income Tax Returns of the respondent, etc. However, as the same evoked no response, the petitioner filed the present petition under Section 311 of Cr.P.C., seeking to examine the defence witness and to issue subpoena to the Manager of the Tamil Nadu Mercantile Bank, Nungambakkam Branch. However, the learned XXXV Metropolitan Magistrate, FTC-II, Egmore,



Allikulam, Chennai, vide order dated 29.10.2025, dismissed the said petition on the ground that the same has been filed only to drag on the proceedings.

He also submitted that if the respondent/complainant fails to produce the said documents, adverse inference can be drawn. Accordingly, he prayed for appropriate orders.

3. This Court gave its careful consideration to the arguments advanced by the learned counsel for the petitioner and perused the materials available on record.

4. For better appreciation, the relevant portion of the impugned order is extracted hereunder:-

“Points:-

a) Heard both sides. This petition is filed for summoning of Bank Manager to establish pleading of jewels at Tamil Nadu Mercantile Bank Ltd, Nungambakkam, Chennai on 05.05.2023. It is strongly objected by the respondent. On perusal of record, the case is in the stage of argument. The alleged petition to be filed stating that our Hon'ble High Court of Madras has given diversion in Crl.O.P.No.23171 of 2025 and Crl,M.P.No. 15961. On perusal of order in Crl.O.P.No.23171 of 2025 it was disposed, due to the reason of the earlier stage of issuance of notice has not been followed.



b) Mere filing of petition by giving notice after posting the case for argument is clearly established his mala fide intention to drag on the proceedings once the petition is filed for summoning of any document before asking relief the petitioner has burden to establish how such document is necessary for issue in such case. In the present case, the issue is whether the cheque is issued for legally enforceable debt or liability, in respect of this issue the relevancy of such document is not explained. Further, in respect of entries in Bankers Book Act, the certified copy of received such bank authority is admissible and in respect of such entries to examine the bank officials is not necessary in view of Section 5 of Bankers Book of Evidence Act. The same principle has been laid down by our Hon'ble High court of Madras in Crl.O.P.2539 of 2025 dated 25.04.2024.

c) In the present case there is no averment whether he applied certified copy or not. Further, the averment regarding pleading of jewels must be entered in bank book. The bank official can give evidence regarding such entry only. Therefore, if the petitioner is needed for any of his defence related to the issue, he could have take steps during cross-examination or his defence evidence. But he failed to do so. Without disclosing relevancy of document to the issue, filing of the present petition in the stage of argument is clearly established that the petition is filed only for the purpose of delay and drag on the proceedings. Hence this court is of considered view that this petition deserves to be dismissed.

In the result, this petition is dismissed."

5. On a perusal of the above order, it is seen that the petitioner filed the above petition under Section 311 of Cr.P.C. when the case was posted for



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arguments. The trial court, finding that filing of this petition after giving notice that too after the matter has been posted for arguments, clearly establishes the mala fide intention of the petitioner/accused to drag on the proceedings and that if the petitioner wants to summon a particular document, it is the duty cast upon the petitioner to establish as to in what way the said document is necessary in this case and the trial court finding that the major issue in this case is whether the disputed cheque has been issued for a legally enforceable debt and the relevancy of the documents sought is not properly explained by the petitioner, dismissed the same.

6. This Court does not find any infirmity in the reasons assigned by the trial court in the order under challenge and therefore, this Court is not inclined to interfere with the same.

7. However, based on the evidence let in and materials available on record, the Trial court is entitled to raise the issue of adverse inference before taking a decision in the case.



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8. This criminal original petition stands dismissed accordingly.

Consequently, the connected miscellaneous petition is closed.

12.11.2025

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NCC : Yes/No

To:

The XXXV Metropolitan Magistrate,
Fast Track Court-II,
Egmore, Allikulam, Chennai.



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