

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.OP No.8752 of 2015

and

M.P.No.1 of 2015

Palanisamy

...Petitioner/Accused

Vs

B.Rizwan

...Respondent/Complainant

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in C.C.No.257/2014 on the file of the Judicial Magistrate No.I, Namakkal and quash the same as null and void.

For Petitioner : Mr.P.R.Balasubramanian

O R D E R

This petition has been filed to call for the records in C.C.No.257/2014 on the file of the Judicial Magistrate No.I, Namakkal and quash the same as null and void.

2.The learned counsel for the petitioner submits that the complaint itself has been filed by a fictitious person and that the complainant is not properly appearing before the Court. The learned counsel for the petitioner produced the 'A' Diary extract. It is seen that the complainant was present on 10.06.2014 and his sworn statement was recorded and summons was issued to the petitioner/accused to appear on 17.07.2014. On 17.07.2014 the complainant was absent, but the petitioner/accused was present. Again on 05.08.2014, the complainant was absent and the petitioner/accused was present. On 05.09.2014, 09.10.2014 and 04.12.2014, both the complainant and the accused were absent.

3. The contention of the petitioner that the complainant is a fictitious person cannot be gone into in a petition under Section 482 Cr.P.C. Hence, this Court is issuing the following direction

to the trial Court:

The trial Court shall issue summons to the complainant for his physical appearance before the trial Court, and examine him as witness and give due opportunity to the accused to cross examine their witness and establish that the complainant is a fictitious person. If the complainant does not appear before the trial Court, then after giving sufficient opportunity to the petitioner/accused, the complaint may be dismissed for default.

With the above observation, this petition is closed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gms

To

1.The Judicial Magistrate No.I,
Namakkal.

2.-Do- Through The Chief Judicial Magistrate,
Namakkal.

1 CC to Mr.P.R.Balasubramanian, Advocate SR.No. 26022

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BUR (CO)
PSI (08.05.2015)