

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2017

CORAM

THE HONOURABLE MR.JUSTICE **M.S.RAMESH**Crl.OP No.28791 of 2017
and Crl.M.P.No.16263 of 2017

G.Augustine Paul Sudhakar .. Petitioner

Vs.

1.Nagaimughan (Deceased)
2.K.M.Sirajudin .. Respondents

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the case in Crl.M.P.No.3393 of 2017 in C.C.No.5384 of 2008 on the file of the learned VIII Metropolitan Magistrate, George Town, Chennai and to set aside the order passed in Crl.M.P.No.3393 of 2017 dated 16.11.2017.

For Petitioner : Mr.K.Sampath Kumar

ORDER

This petition has been filed by the petitioner challenging the order passed by the learned VIII Metropolitan Magistrate, George Town, Chennai in Crl.M.P.No.3393 of 2017 in C.C.No.5384 of 2008 dated 16.11.2017.

2.The petitioner's petition filed under Section 311 of Cr.P.C., for recalling P.W.5 for re-examination was dismissed by the trial Court on the ground that the averments made by the petitioner in the petition was not acceptable in the eye of law.

3.The learned counsel for the petitioner submitted that the deposition of P.W.5 was not properly recorded and great prejudice would be caused if P.W.5 is not recalled and re-examined. Hence, he submitted that an opportunity would be given to the petitioner to recall and re-examine P.W.5.

4.Heard Mr.K.Sampath Kumar, the learned counsel for the petitioner.

5.It is true that the Hon'ble Supreme Court in various cases condemned the practices of vexatious applications filed under Section 311 of Cr.P.C to protract the proceedings.

6.Nevertheless, the learned counsel for the petitioner submitted that the petitioner may be given an opportunity to recall and re-examine PW5 to prove the allegation of the respondents in the complaint is false.

7.In view of the submissions made by the petitioner, by giving an opportunity to recall and re-examine the prosecution witness PW5, by fixing the time frame for completing the re-examination will not cause prejudice to the prosecution and also the

proceedings may not get unjustifiably prolonged.

8.Hence the order passed in Crl.M.P.No.3393 of 2017 in C.C.No.5384 of 2008 dated 16.11.2017 by the learned VIII Metropolitan Magistrate, George Town, Chennai is set aside. Consequently, the learned VIII Metropolitan Magistrate, George Town, Chennai is directed to permit the petitioner to recall and re-examine PW-5 on 27.12.2017. It is made clear that the petitioner shall complete the re-examination on the same day.

9.With the above observations and directions, the Criminal Original Petition stands allowed. Consequently, the connected Miscellaneous Petition is also closed.

21.12.2017

DP

Note:Issue order copy on 26.12.2017

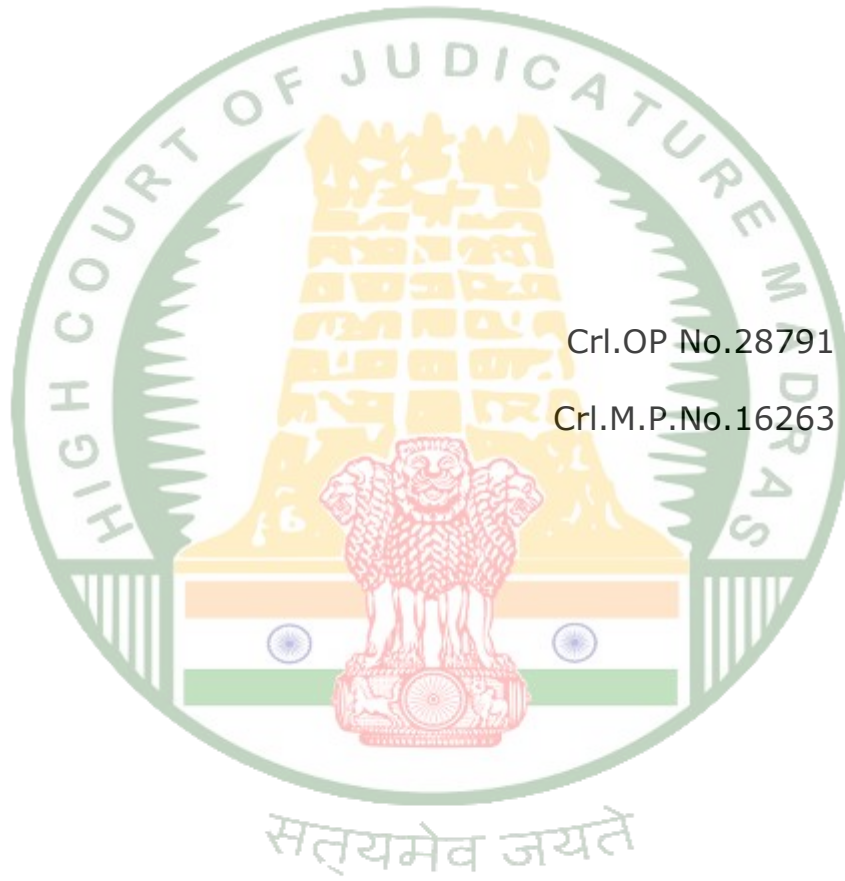
To

1.The VIII Metropolitan Magistrate,
George Town, Chennai.

2.The Public Prosecutor,
High Court, Madras.

M.S.RAMESH.J,

DP



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