



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2022

WEB COPY

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.5258 of 2022

and

Crl.M.P.No.2835 of 2022

Madanlal

... Petitioner

Vs.

The State represented by
The Inspector of Police,
C-2, Elephant Gate Police Station,
Elephant Gate, Chennai.

... Respondent

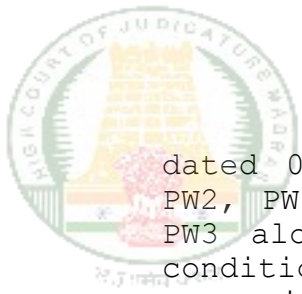
PRAYER: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleaded to set aside the dismissal order dated 02.12.2021 passed by the learned VIII Metropolitan Magistrate, George Town, Chennai in M.P.No.10342 of 2021 in C.C.No.544 of 2012 with regard to recall PW3 for cross examination on the side of the petitioner A2.

For Petitioner	: Ms.G.Sumitra
For Respondent	: Mr.A.Gokulakrishnan Additional Public Prosecutor.

ORDER

The Criminal Original Petition has been filed to set aside the dismissal order dated 02.12.2021 passed by the learned VIII Metropolitan Magistrate, George Town, Chennai in Crl.M.P.No.10342 of 2021 in C.C.No.544 of 2012.

2. Learned counsel for the petitioner would submit that the petitioner is arrayed as A2, who is facing trial for the offence under Sections 406, 465, 468, 471 and 420 IPC. The petitioner has been appearing for trial from the year 2012, however, due to improper advice, the petitioner was unable to cross examine the witness and thereby, the petitioner had filed an application in Crl.M.P.No.10432 of 2021, seeking to recall PW1 to PW7 for cross examination. The Trial Court by an order



dated 02.12.2021, had allowed the petition in respect of PW1, PW2, PW4 to PW7 and had dismissed the application in respect of PW3 alone, stating that PW3 was old and he was in critical condition to move around. She would further submit that PW3 is a crucial witness and the cross examination of PW3 is necessary for arriving at a just decision of the case. She would fairly submit that there had been a serious lapse on the part of the petitioner in not cross examining PW3, when he was present before the Court, however, if one chance is given to the petitioner, he would cross examine PW3 on the date of his appearance without delay and the petitioner is also prepared to abide by any terms or cost as fixed by this Court.

3. The learned Additional Public Prosecutor would submit that PW3 is aged about 72 years and the Trial Court finding that he is old and sick, dismissed the application. He would further submit that the learned VIII Metropolitan Magistrate Court is in the second floor and it would be difficult for the relatives of PW3 to take him to the second floor.

4. At this juncture, learned counsel for the petitioner would submit that the petitioner is prepared to pay the necessary cost so as to enable PW3 to appear before the Court, with the help of assistants. He would reiterate that PW3 will be cross examined on the same day of his appearance without delay and if not, the petitioner will give up his further chance of cross examining PW3.

5. Heard the learned Counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record, including the evidence in chief given by PW3.

6. This Court is of the opinion that cross examination of PW3 is necessary for arriving at a just decision of the case and it is necessary to recall PW3 for cross examination.

7. In view of the above, the order passed by the learned VIII Metropolitan Magistrate, George Town, Chennai in CrI.M.P.No.10342 of 2021 dated 02.12.2021, is set aside in respect of PW3 and the Trial Court is directed to fix the date in consultation with the prosecution and recall PW3 for cross examination. The petitioner shall cross examine PW3 on the date of his appearance before the Court and in the event of petitioner not cross examining PW3 on the date of his appearance, he will lose the further chance of cross examining PW3.

8. The petitioner shall deposit a sum of Rs.6000/- before the Trial Court within a period of two weeks from the date of



receipt of a copy of this order and the Trial Court shall release the amount to PW3 on the date of his appearance.

9. Accordingly, the Criminal Petition stands allowed. Consequently, the connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (CS-VII)

//True Copy/

Sub Assistant Registrar

HAM

To

1. The VIII Metropolitan Magistrate,
George Town, Chennai.
2. do-through The Chief Metropolitan Magistrate,
Egmore, Chennai-8.
3. The Inspector of Police,
C-2, Elephant Gate Police Station,
Elephant Gate, Chennai.
4. The Public Prosecutor,
High Court of Madras.

+1cc to M/s.G.Sumitra, Advocate, S.R.No.15377

Cr1.O.P.No.5258 of 2022 and
Cr1.M.P.No.2835 of 2022

TE (09/03/2022)