



Crl.OP.No.23943 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.O.P.No.23943 of 2022
and Crl.M.P.No.15207 of 2022

M.M.Rangasamy

... Petitioner

Vs.

1. State Rep. by
Inspector of Police B-10,
Selvapuram Police Station,
Coimbatore.
(Crime No.301of 2022)

2. T.Venkateshwaran

... Respondents

PRAYER: This Criminal Original Petition filed under Section 482 of Cr.P.C., prayed to call for records in C.M.P.No.1700 of 2019 in C.C.No.18 of 2003, to set aside the order dated 18.02.2022, passed by the Learned Judicial Magistrate No.V, Coimbatore.

For Petitioner

: Mr.C.S.Dhanasekaran

For Respondent 1

: Mr.S.Santhosh
Government Advocate(Crl.side)



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ORDER

This Criminal Original Petition has been filed to set aside the order in C.M.P.No.1700 of 2019 in C.C.No.18 of 2003 dated 18.02.2022 passed by the Learned Judicial Magistrate No.V, Coimbatore.

2. The learned counsel for the petitioner would submit that the petitioner is the defacto complainant. Based on his complaint, the 1st respondent police has registered a case in Crime No.301 of 2002 for the offences under Section 406 and 420 of IPC as against the 2nd respondent herein. He would further contend that the petitioner was examined as P.W.3 in chief on 15.03.2019 and the petitioner was unable to cross-examine him on that date. Thereafter, the 2nd respondent had filed a petition under Section 311 of Cr.P.C to recall P.W.3 for the purpose of cross-examination and the same was allowed in C.M.P.No.1700 of 2019 by order dated 18.02.2022. It is the contention of the learned counsel for the petitioner that the petitioner, being a complainant has to be heard before passing the impugned order. Hence, he seeks direction to set aside the order passed by the Trial Court.



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3. The learned Government Advocate (Crl.side) for the first respondent police would submit that after examination of P.W.3, no further witnesses have been examined.

4. On perusal of the records, it reveals that the petitioner had lodged a complaint as against the 2nd respondent/accused and a case has been registered in Crime No.301 of 2002 for the offences under Sections 406 & 420 of IPC. After completion of investigation, the 1st respondent police had filed a final report in C.C.No.18 of 2003 as against the 2nd respondent/ accused. After framing of charge, trial has commenced and some of the prosecution witnesses have been examined. Thereafter, the 2nd respondent had filed a petition under Section 311 of Cr.PC in C.M.P.No.1700 of 2019 to recall P.W.3 for the purpose of cross-examination. It further reveals that P.W.3 has been chief-examined on 15.03.2019 and the accused/2nd respondent has failed to cross-examine the P.W.3 on the same day. Hence, C.M.P.No.1700 of 2019, filed by the 2nd respondent was allowed by the learned Judicial Magistrate with the direction that the 2nd respondent herein shall deposit amount of Rs.500/- before the Trial Court and also directed the 2nd



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respondent to cross-examine the P.W.3 on further hearing without fail. Aggrieved over the same, the present petition has been filed. In support of his contentions, learned counsel for the petitioner also relied upon the judgment reported in **2022 SCC OnLine SC 453** in the case of **Jagjeet Singh and Others Vs Ashish Mishra alias Monu and Another**. This Court is of the view that the above judgment pertaining to challenge the bail application which was allowed without hearing the complainant. The Hon'ble Supreme Court of India held that with regard to the hearing of the complainant before granting bail to the accused is not disputed. When recalling the witnesses by the accused for the purpose of cross-examination, notice need not be given to the complainant and a fair chance has to be given to the accused for cross-examination of witnesses since a fair trial is assured by the Constitution for all accused. Hence, I do not find any merits in this petition.

5. Accordingly, this Criminal Original petition is dismissed. Consequently, connected miscellaneous petition is closed.

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Internet : Yes / No

Index : Yes / No

Speaking / Non Speaking order
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To

1. The Inspector of Police B-10,
Selvapuram Police Station,
Coimbatore.
2. The Public Prosecutor
High Court, Madras



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V.SIVAGNANAM,J.

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