



WEB COPY



CrI.O.P No.20657 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2022

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

CrI.O.P No.20657 of 2021
and CrI.M.P. No.11260 of 2021

Balasubramania Adityan

... Petitioner

Vs.

Vanathi Srinivasan

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, praying to set aside the order dated 04.09.2021 passed in CrI.M.P.No. 8036 of 2021 in C.C.No.4975 of 2017 on the file of XVII Metropolitan Magistrate Court, Saidapet, Chennai.

For Petitioner : Ms.S.V.Suruthi

For Respondent : No appearance

ORDER

This Criminal Original Petition has been preferred challenging the docket order of the learned XVII Metropolitan Magistrate, Saidapet, Chennai dated 04.09.2021 passed in CrI.M.P.No.8036 of 2021 in



C.C.No.4972 of 2017 and set aside the same.

2. Though notice has been served on the respondent, she has not appeared before this Court either in person or through pleader.

3. The learned counsel for the petitioner submitted that the respondent who is the complainant in C.C.No.4972 of 2017 has filed a petition to recall PW.1 to PW.3 and record their evidence afresh. The said petition was allowed on 04.09.2021. The learned XVII Metropolitan Magistrate, Saidapet has passed the following order in CrI.MP.No.6672 of 2021:

"Date: 04-09-2021

This petition is pending for filling counter of Respondent /Accused Counter not filed. Respondent /Accused not present and no representation. The absent of Respondent /Accused shows that he has no objection to allow this petition, considering the above facts, circumstance of case and reason stated by petitioner, it is just and necessary to allow this petition. Hence this petition is allowed to recall the PW.1 to PW.3"

4. The learned counsel for the petitioner submitted that they had filed their counter but the learned Magistrate has wrongly recorded that the respondent did not have any objection to allow the petition filed by the complainant for eschewing the evidence of PW.1 to PW.3 and to record



their evidence afresh. It is further submitted that the respondent/accused had objection for the petition filed by the complainant and as the date of hearing just requested the Court to pass over the matter.

5. The only contention of the petitioner is that the petition has been allowed on the wrong presumption that the petitioner /accused did not have any objection to allow the criminal proceedings in Crl.MP.No.6672 of 2021 for the purpose of recalling PW.1 to PW.3. The order of the learned Magistrate does not state anything about the endorsement if any made by the petitioner/accused that he did not have any objection to allow the petition. But the Court itself presumed that the respondent did not have any objection.

6. In view of the above stated reasons, I feel it is appropriate to set aside the docket order dated 04.09.2021 and remand the matter to the learned XVII Metropolitan Magistrate, Saidapet, Chennai, in order to consider the Criminal Miscellaneous Petition afresh after hearing both parties and to pass appropriate orders in accordance with law.



WEB COPY



Crl.O.P No.20657 of 2021

R.N.MANJULA, J.,

jrs

In the result, this Criminal Original Petition is **allowed** and the docket order dated 04.09.2021 passed by the learned XVII Metropolitan Magistrate, Saidapet, Chennai in Crl.M.P.No.8036 of 2021 in C.C.No.4972 of 2017 is set aside and the Criminal Miscellaneous Petition is remanded back to the learned XVII Metropolitan Magistrate, Saidapet, Chennai to consider and pass orders afresh on merits after hearing both sides and in accordance with law.

27.10.2022

Index : Yes/No
Speaking Order : Yes / No
Internet: Yes/No

jrs

To

The XVII Metropolitan Court,
Saidapet, Chennai.

Crl.O.P No.20657 of 2021
and
Crl.M.P. No.11260 of 2021