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Crl.O.P.No.7539 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 06.04.2023

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THE HON'BLE Mr. JUSTICE **G.CHANDRASEKHARAN**

Crl.O.P.No.7539 of 2023
and Crl.M.P.No.4813 of 2023

N.Prabakaran

...Petitioner

Vs.

Praveen Bohra Jain

...Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the order made in CMP No.885 of 2023 dated 22.02.2023 in STC No.950 of 2015 pending on the file of the Judicial Magistrate Udthagamandalam.

For Petitioner : Mr.K.Nirmal Kumar

ORDER

This Criminal Original Petition has been filed to set aside the order made in CMP No.885 of 2023 in STC No.950 of 2015 dated 22.02.2023 pending on the file of the Judicial Magistrate, Udthagamandalam.

2. The learned counsel for the petitioner submitted that the petitioner filed a



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petition to recall P.W.1 under Section 311 Cr.P.C. That petition was dismissed by the learned Judicial Magistrate, Udhagamandalam. He further submitted that though the petitioner was ready for cross examination, due to non appearance of P.W.1, cross examination could not be completed. Unless the petitioner is permitted to cross examine P.W.1, the petitioner would be seriously prejudiced. Therefore, this petition.

3. Considered the submission of the learned counsel for the petitioner and perused the records.

4. Reading of the order dated 22.02.2023 in CMP No.885 of 2023 in STC No.950 of 2015 passed by the learned Judicial Magistrate, Udhagamandalam shows that P.W.1 was examined in chief and the matter was adjourned for several hearings for cross examination. P.W.1 was partly cross examined on 28.06.2017. Since the petitioner has not appeared before the Court for several hearings and due to his failure to cross examine P.W.1, the cross examination was closed on 24.08.2017. Therefore, the petitioner filed a petition in CMP No.7450 of 2017 for recalling P.W.1. The petition was allowed on 03.10.2017, by imposing costs of



Rs.500/-. Even thereafter, the petitioner has not come forward to complete the cross examination. Now, the case is pending for defence evidence. At this stage, this petition is filed only to drag the proceedings.

5. This Court on perusing the records finds that P.W.1 was partly cross examined and the petitioner failed to cross examine P.W.1 despite giving several opportunities including on the petition for recall of P.W.1 in CMP No.7450 of 2017. The petitioner has produced the daily case status only from September, 2022. It shows that for majority of the hearings both the parties were not present. However, on such occasions, when P.W.1 was present, he was not cross examined. There is no case status report produced or diary extract produced from the year 2017 till 2022. S.T.C.No.950 of 2015 is pending from the year 2015. The fact that it is not yet disposed shows that the petitioner has not co-operated for the disposal of the case by not cross examining P.W.1.

6. In this view of the matter, this Court is not inclined to set aside the order passed by the learned Judicial Magistrate, Udhagamandalam in CMP No.885 of 2023 in STC No. 950 of 2015 dated 22.02.2023 and the order passed by the



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learned Judicial Magistrate, Udhagamandalam in CMP No.885 of 2023 in STC

No. 950 of 2015 dated 22.02.2023 is confirmed.

7. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous petition is closed.

06.04.2023

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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

To

1. The Judicial Magistrate, Udhagamandalam.

2. The Public Prosecutor,
High Court, Madras.

G.CHANDRASEKHARAN.J.,



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