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Crl.O.P.No.10462 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.10462 of 2023
and Crl.M.P.No.6726 of 2023

T.Ruby Thomas @ Ruby Christy

...Petitioner

Vs.

The State of Tamil Nadu,
Rep. by the Inspector of Police,
G-1, Vepery Police Station,
Vepery, Chennai – 600 007.

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to set aside the order dated 17.04.2022 in C.C.No.914 of 2017 on the file of the learned II Metropolitan Magistrate, Egmore, Chennai.

For Petitioner : Mr.Charles Kamalesh M.Appaji

For Respondent : Mr.Leonard Arul Joseph Selvam
Government Advocate(Criminal side)

ORDER

This Criminal Original Petition is filed to set aside the order dated 17.04.2022 in C.C.No.914 of 2017 on the file of the learned II Metropolitan Magistrate, Egmore, Chennai.



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2.The only grievance of the petitioner is that on a memo filed by the respondent Police for summoning an additional witness, the learned Magistrate passed an order of issuance of summons to the witness, without putting the petitioner on notice about the filing of the memo and affording an opportunity to contest the memo.

3.Mr.P.Paramasiva Doss, the learned counsel appearing for defacto-complainant submitted that by permitting the examination of additional witness, no prejudice would be caused to the petitioner.

4.Considered the rival submissions and perused the records.

5.It is seen from the records that respondent Police filed a memo on 27.03.2023 for examining one Prakash, son of Vadivelu as additional witness for the reason that he signed as an attesting witness in some documents. It is seen from the orders passed on 17.04.2023, the learned Magistrate passed the following order as “Heard, Issue fresh summon to the witness”. There is no material available to show that, filing of this memo was informed to the



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petitioner and petitioner was given an opportunity to contest the memo. No doubt that under Section 311 Cr.P.C. the Magistrate, at any stage of any inquiry, trial or other proceeding under this code, summon any person as a witness, if his evidence appears to be essential for the just decision of the case. In a criminal trial, it is expected that the petitioner/accused should be put on notice about the proposal to examine additional witness. Since, petitioner has not been put on notice, this Court set aside the order dated 17.04.2022 in C.C.No.914 of 2017 passed by the learned II Metropolitan Magistrate, Egmore, Chennai. The learned II Metropolitan Magistrate, Egmore, Chennai, is directed to issue notice on the memo to the petitioner/accused and then pass appropriate orders on the memo seeking the examination of aforesaid additional witness.

6. With the above direction and observation, this Criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

07.06.2023

Internet : Yes
Index : Yes/No
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G.CHANDRASEKHARAN, J.

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To:

1.The the Inspector of Police,
G-1, Vepery Police Station,
Vepery, Chennai – 600 007.

2.The Public Prosecutor,
High Court of Madras.

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