



WEB COPY

Crl.O.P.No.21896 of 2023



**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 17.10.2023

CORAM

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN**

Crl.O.P.No.21896 of 2023  
and Crl. MP. No.15162 of 2023

N.Premanathan

... Petitioner

Vs.

J.Sabrainath

... Respondent

**Prayer:** Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records and set aside the order dated 05.08.2023 passed by the learned Judicial Magistrate No.1, Gopichettipalayam in list of witness filed in S.T.C. No.5 of 2022.

For Petitioner : Mr.S.P.Yuaraj

**ORDER**

This petition filed by the accused in a private complaint instituted under Section 138 of the Negotiable Instruments Act, 1881 to summon one G.Parameswaran, Advocate who shares the same premises along with the Complainant. According to the affidavit filed by the petitioner, the joint



office was in possession and control of the complainant who was carrying on finance business. To prove the theft and misuse of the cheque, the said G.Parameswaran, is the vital witness. The trial Court stating that there is no reference about G.Parameswaran either in the reply notice or in the course of cross-examination and no specific reasons stated for what G.Parameswaran must be summoned and dismissed the petition. Being aggrieved, the present Original Petition is filed.

2. Unlike IPC offences, offences under Section 138 of the Negotiable Instruments Act, requires the accused to discharge the burden, therefore, fair and adequate opportunity must be given to the complainant to set forth his defence which will enable him to discharge the reverse burden. In this case, the specific defence taken by the accused is that the cheque was stolen when he along with Advocate G.Parameswaran share his office jointly and in the same premises, the complainant was also having in his business.

3. In the said circumstances, having spoken about the fact in the reply itself, some suggestion been put to the complainant during the cross examination. For fair trial and just decision of the case, examination of the



Crl.O.P..No.21896 of 2023

said G.Parameswaran is essential. Hence this Original Petition is allowed.

The petitioner shall pay batta within 15 days from today. On such payment, summons to the witnesses to be passed and the petitioner shall complete the examination of the witnesses on the same day.

**17.10.2023**

Index : Yes/No

Neutral Citation : Yes/No

rkp

To

1. The Judicial Magistrate No.1,  
Gopichettipalayam.

2. The Public Prosecutor,  
High Court of Madras,  
Chennai – 600 104.



WEB COPY



Crl.O.P.No.21896 of 2023

**Dr.G.JAYACHANDRAN,J.**

rkp

Crl.O.P.No.21896 of 2023

and

Crl.MP. No.15162 of 2023

17.10.2023