



WEB COPY

W.P.No.34807 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.12.2023

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

W.P. No.34807 of 2023

and

W.M.P.No.34812 of 2023

Joy Kaitharath

... Petitioner

-vs-

1.M/s.Chemmanur International Jewellers,
Amba Sky Walk Mall,
Office No.26, Ground Floor, Poonamallee High Road,
Aminjikarai, Chennai-600 029.
represented by its
Chennai Shop Manager and Power of Attorney Holder
M.Savinraj,
presently rep.by
Eldos P.V.

...Respondent

PRAYER : Writ Petition has been filed under Article 226 of the Constitution of India, to issue Writ of Certiorari to call for the records, quash the warrant, provide necessary directions C.C.No.55 of 2017 to the Hon'ble V Metropolitan Magistrate, Egmore, Chennai.

For Petitioner

: Mr.P.Saranath

ORDER

This Writ Petition is filed by the accused in C.C.No.55 of 2017 on the file of the V Metropolitan Magistrate, Egmore, Chennai.



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2. The grievance of the petitioner is that earlier he approached the High Court to quash the case, but the High Court had dismissed the quash petition vide order dated 16.07.2020 with liberty to the petitioner herein to raise all the grounds raised in the quash petition before the trial Court and also on considering his age, his personal appearance was dispensed with and he shall be represented by a counsel after filing appropriate application. However, the petitioner shall be present before the Court at the time of furnishing copies, framing charges, questioning under Section 313 Cr.P.C., and at the time of passing judgment.

3. While so, the petitioner has also approached the Hon'ble Supreme Court to transfer the case pending in Chennai to the Court at Kerala on the ground of language barrier and certain apprehensions. The Hon'ble Supreme Court while dealing with the Transfer Petition(Criminal) No.82 of 2021 filed by this petitioner after observing his earlier quash petition before the High Court and taking note of his apprehension to conduct the trial in Chennai, Tamil Nadu had directed the Magistrate to record all the proceedings simultaneously in English language as well and also permitted the petitioner and his witnesses to



appear/depose through on-line mode. If the petitioner finds any other impediment in defending himself, he can approach the High Court.

4. Based on the said observation, the petitioner herein had sought liberty before the trial Court to appear through on-line for all the proceedings of hearing till the judgment. Since that was not entertained by the trial Court as per the direction of the Hon'ble Supreme Court, he is now before this Court by way of Writ Petition. The narration of the facts extracted above clearly indicates that the petitioner who is an accused in C.C.No.55 of 2017 been given liberty to appear through counsel and his personal appearance is expected only at the time of furnishing copies, framing charges, questioning under Section 313 Cr.P.C., and at the time of passing judgment. While this Court has made very clear the dates on which his physical presence is required, just because the Hon'ble Supreme Court has said he may be permitted to depose on-line mode, he cannot expect the Court to try him without his personal appearance for the hearings, when his personal appearance is essential and necessary in the view of the trial Court.



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Dr.G.JAYACHANDRAN, J.

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5. In spite of providing the liberty to appear before the Court through counsel except on certain crucial hearing dates his physical appearance is required. The petitioner/accused seeks indulgence of the higher Court forum to conduct the trial without appearing before the trial Court even on crucial hearing. This cannot be countenance and entertained, Hence this Writ Petition is dismissed. Consequently, the connected Miscellaneous Petition is also dismissed.

18.12.2023

Internet : Yes/No

Index : Yes/No

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To

The V Metropolitan Magistrate, Egmore, Chennai.

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