



CrI.O.P.(MD)No.12121 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.10.2023

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

CrI.O.P.(MD)No.12121 of 2023

and

CrI.M.P(MD) No.9574 of 2023

Thangam Enterprises
Through its Proprietor T.Arunshankar,
99A, Ettaiyapuram Road,
Tuticorin, Tuticorin District.

... Petitioner/Accused

A.Sivakumar

...Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for records in Cr.M.P.No.3299/2023 in C.C. No.131/2018 dated on 03.06.2023 on the file of the learned Judicial Magistrate, Fast Track Court, Tuticorin, Tuticorin District and Set aside the same.

For Petitioner : Mr.Raamakrishnan.KA

For Respondent : Mr.S.Deenadhayalan



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ORDER

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This Criminal Original Petition has been filed to call for records in Cr.M.P.No.3299/2023 in C.C. No.131/2018 dated on 03.06.2023 on the file of the learned Judicial Magistrate, Fast Track Court, Tuticorin, Tuticorin District and Set aside the same.

2. Even though the case is of the year 2018, P.W.1 was examined in Chief on 18.07.2022. At that time, he was not cross examined. Later the petitioner filed a petition under Section 311 of Cr.P.C, it was allowed and P.W.4 was cross examined at length on 07.01.2023. On the basis of the above said cross examination, P.W.2 was examined and cross examination was also over. After that the present application was filed seeking recall of P.W.1 for the purpose of proving certain documents. The above said application was dismissed stating that inspite of proper opportunity given for cross examination of witnesses, it was not utilised by the petitioner at the first instance, without disclosing the documents, which are proposed to be marked, the present application has been filed.



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3. Now the grievance of the petitioner is that there is every possibility for the defacto complainant to deny the documents during the cross examination. When the documents are proposed to be marked through cross examination, documents cannot be mentioned either in the list of documents or at that time of filing the recall application. To a query raised, the learned counsel for the petitioner submitted that the above said documents are pertaining to the business transaction between the parties, which occurred in the earlier occasion, the above said petition has been filed.

4. Even though, there is delay on the part of the petitioner and objection made by the respondent, considering the above said submission of the petitioner, one more opportunity is given to the petitioner to recall P.W.1 on stringent conditions. The petitioner is directed to pay Rs. 5,000/- (Five Thousand Only) to the P.W.1 directly. On such payment, the trial Court may fix the date to cross examine the P.W.1. On that date the petitioner must cross examine the P.W.1 without fail. If any failure is noticed on the part of the petitioner, his further right will be forfeited forever.



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5. Let the above said trial process be completed within two months after further cross examination of P.W.1 without further adjournments.

The petitioner is directed to co-operate for the completion of above said trial process.

6. With the above said direction, this petition stands allowed. Consequently, the connected Miscellaneous Petition is closed.

17.10.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

Indu

To

- 1.The Judicial Magistrate, Fast Track Court,
Tuticorin.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN,J.

Indu

Order made in
Crl.O.P.(MD)No.12121 of 2023

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