



Crl.O.P.(MD) No.17167 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.10.2023

CORAM:

THE HONOURABLE DR.JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.17167 of 2023
and Crl.M.P.(MD).No.13653 of 2023

Savarimuthu

... Petitioner/ Petitioner/ Accused No.3

Vs.

The State rep. by
The Inspector of Police,
District Crime Branch,
Sivagangai,
Sivagangai District.
Crime No.6 of 2019.

...Respondent / Respondent / Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records of the order in Crl.M.P.No.9408 of 2023 in C.C.No.515 of 2022 on the file of the Judicial Magistrate No.II, Sivagangai, dated 22.08.2023 and set aside the same.

For Petitioner :Mr.D.Rameshkumar

For Respondent :Mr.M.Sakthi Kumar
Government Advocate (crl.side)



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ORDER

This criminal original petition has been filed to set aside the order passed in Crl.M.P.No.9408 of 2023 in C.C.No.515 of 2022 on the file of the Judicial Magistrate No.II, Sivagangai, dated 22.08.2023

2.The learned counsel for the petitioner would submit that the petition has been filed by the petitioner seeking recall of PW1 and PW2 for further cross examination. The petitioner is facing charges before the trial Court under Sections 406, 420 and 120 (b) of I.P.C. They were examined in chief on 27.06.2023 and 22.08.2023 respectively. On the date of the chief examination, because of the inability on the part of the learned Senior Advocate engaged by the petitioner before the trial Court, cross examination could not be conducted.

3.Even though the reason set out by the petitioner for non cross examination is not appreciable, considering the fact that the petitioner is facing charges under Sections 406, 420 and 120 (b) of I.P.C., this Court is of the view that without cross examination of the above said witnesses, the fair justice may not be possible. Therefore, this Court is inclined to give one more opportunity to



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4.On that sole ground, the impugned order passed by the learned Judicial Magistrate No.II, Sivagangai, in Crl.M.P.No.9408 of 2023 in C.C.No.515 of 2022, dated 22.08.2023, is hereby set aside and this criminal original petition is **allowed** with following stringent conditions.

1) The petitioner must deposit a sum of Rs.5,000/- (Rupees Five Thousand only) as cost to the each of the witnesses namely PW1 & PW2 to the credit of C.C.No.515 of 2022, before the trial Court, within a period of fifteen days from the date of receipt of a copy of this order.

2) On such deposit, the trial Court is directed to recall the witnesses P.W.1 and P.W.2 for cross examination by fixing a particular date. On that date, the petitioner must cross examine the above said witnesses without fail. If any failure is noticed, then the further right to cross examine the witness will be forfeited.

Consequently, connected miscellaneous petition is closed.

10.10.2023



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

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To

- 1.The Judicial Magistrate No.II, Sivagangai.
- 2.The Inspector of Police,
District Crime Branch,
Sivagangai,
Sivagangai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVA. J.

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