



Crl.O.P.(MD) No.17254 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.17254 of 2023
and Crl.M.P.(MD).No.13681 of 2023

N.Thanga Krishnan

...Petitioner

Vs.

The Sub Inspector of Police,
District Crime Branch,
Kanyakumari District.

...Respondent

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to set aside the order passed in Cr.M.P. No.9133 of 2023 in C.C. No.264 of 2009 on the file of the learned Judicial Magistrate No.I, Nagercoil, dated 08.08.2023 and to recall the witness of the PW1 to PW7, PW9 for cross examination.

For Petitioner : Mr.P.T.Ramesh Raja

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 Cr.M.P.No.9133 of 2023 in C.C.No.264 of 2009 on the file of the learned Judicial Magistrate No.I, Nagercoil, dated 08.08.2023 and to recall the witness of the PW1 to PW7, PW9 for cross examination.

2.The learned counsel for the petitioner would submit that the petition has been filed by the petitioner seeking recall of PW1 to PW7 & PW9 for further cross examination. The petitioner is facing charges before the trial Court under Sections 406, 409, 420 and 201 of I.P.C. r/w. 34 of IPC. The trial was commenced on 19.08.2019 by examining PW1 & PW2. PW3 & PW4 were examined on 15.03.2021, PW5 on 16.08.2021 and PW6 & PW7 on 04.10.2021. But, they were not cross examined on that dates. The earlier counsel engaged by him has not cross examined the above said witnesses. Thereafter, he changed his counsel. PW9 was examined in chief on 05.06.2023. On that day, due to boycott of Bar Association, he could not cross examine him. But, the said petition was dismissed on the ground that without any bonafide reasons and with an intention to delay the criminal proceedings, this petition has been filed.



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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, 409, 420 and 201 of I.P.C. r/w. 34 of IPC, this Court is of the view that without cross examination of the above said witnesses, fair justice may not be possible. Therefore, this Court is inclined to give one more opportunity to the petitioner to recall the above said witnesses.

4. On that sole ground, the impugned order passed in Cr.M.P.No.9133 of 2023 in C.C.No.264 of 2009 on the file of the learned Judicial Magistrate No.I, Nagercoil, dated 08.08.2023, is hereby set aside and this criminal original petition is **allowed** with following stringent conditions.

1) The petitioner must deposit a sum of Rs.2,500/- (Rupees Two Thousand and Five Hundred only) as cost to the each of the witnesses namely PW1 to PW7 and PW9 to the credit of C.C.No. 264 of 2009, 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



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witnesses PW1 to PW7 and PW9 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.

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

04.10.2023

TM

To

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



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G.ILANGOVAN. J.

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