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CrI.O.P.(MD)No.22584 of 2023



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:15.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.ILANGO VAN**

CrI.O.P.(MD)No.22584 of 2023

and

CrI.M.P.(MD) No.17665 of 2023

Yovan

... Petitioner/Petitioner/Accused

Vs.

Rajasekar

... Respondent/Respondent/
Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to direct the learned Judicial Magistrate, Aruppukottai to recall the Respondent/Complainant as ordered in Cr.M.P.No.1027 of 2023 in C.C.No.111 of 2022 by its order dated 24.05.2023.

For Petitioner : Mr.S.Balakarthick

ORDER

This Criminal Original Petition is filed to direct the learned Judicial Magistrate, Aruppukottai, to recall the Respondent/Complainant as ordered in Cr.M.P.No.1027 of 2023 in C.C.No.111 of 2022 by its order



dated 24.05.2023.

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2.The petitioner is an accused in C.C.No.111 of 2022 and he is facing charges under Sections 138 and 142 of Negotiable Instrument Act before the trial Court. He filed an application during pendency of the trial process under Section 311 Cr.P.C., to recall P.W.1 for cross examination. It was also allowed in Cr.M.P. No.1027 of 2023 on 24.05.2023, imposing cost of Rs.5,000/- upon the petitioner. The matter was adjourned to 09.06.2023.

3. The learned counsel for the petitioner would submit that the petitioner had paid the money directly to the P.W.1. But the learned Judge was on other duty on 09.06.2023. So, the matter was adjourned to 01.07.2023. But at that time, evidence was closed, because of cost was not paid by the petitioner, since there is no receipt for payment of cost. So, the petitioner could not aggrieved over the order passed by the concerned trial Court. But the petitioner had paid the money, without depositing the same to the trial Court. It appears that he personally handed over to the defacto complainant without any receipt.



4. But such sort of contention that without any receipt, the petitioner paid money to the defacto complainant cannot be appreciated and also accepted.

5. But however, considering the fact that the petition to recall P.W.1 was allowed on payment of cost by the concerned trial Court. But due to fault on the part of the Advocate on record of the petitioner, the above said lapse occurred. On that ground, the order passed by the concerned trial Court is set aside and one more opportunity is given to the petitioner on payment of cost of Rs.5,000/- shall be paid to P.W.1. Let the cost be deposited within a week before the trial Court. On such payment, the trial Court shall fix the date to recall P.W.1 for further cross examination. The petitioner must cross examine the P.W.1 on that date, without fail. If any failure is noticed on the part of the petitioner, his further right will be forfeited forever.

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

15.12.2023

Index : Yes/No
Internet : Yes/No
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G.ILANGOVAN. J.

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To

- 1.The learned Judicial Magistrate, Aruppukottai.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P.(MD)No.22584 of 2023

15.12.2023