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CrI.OP.No21004 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.OP.No.21004 of 2024

K.Kavitha

... Petitioner

Vs.

Otmal Heerachand

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C and Section 528 of BNSS Act to direct the trial Court to re-call P.W.1 in STC.No.1318 of 2022 on the file of the IV Fast Track Court, George Town, Chennai and permit the petitioner/accused to cross examine P.W.1 at any day fixed by this Hon'ble Court based on the order of this Hon'ble Court in CrI.OP.No.7682 of 2024 dated 23.03.2024.

For Petitioner : Mr.R.Arun Kumar

ORDER

The learned counsel for the petitioner submits that pursuant to the order of this Court, petitioner has paid Rs.5,000/- as a condition to re-call P.W.1 and when the matter was posted on 26.04.2024, the learned counsel on record found on the notice board of the Court that all



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evidence cases are adjourned to 27.06.2024. Therefore, on 27.06.2024, when he enquired the Registry, he found that the case has already been listed on 12.06.2024 and 20.06.2024 and his application to re-call and cross-examine P.W.1 been closed, despite payment of costs. Hence, the present petition under Section 528 of BNSS Act to set aside the order passed by the trial Court on 20.06.2024 and permit the petitioner herein to cross-examine P.W.1, since he has already paid the modified costs imposed by the High Court and the same was received by the complainant.

2. This Court on perusal of the record finds that the non appearance of the petitioner/accused on 12.06.2024 and 20.06.2024 is due to a bonafide error in noting the hearing date and having complied with the condition imposed by this Court by paying Rs.5,000/- to the complainant, there can be no reason for the petitioner to abstain himself from appearing before the Court on hearing dates unless there was some mistake in noting the date of appearance. Therefore, the right to re-call and cross-examine P.W.1 which has already been granted to the petitioner herein and the petitioner having complied with the condition, his right cannot be deprived for the reason of non appearance on



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12.06.2024 and 20.06.2024 which has been now satisfactorily explained
by the learned counsel appearing for the petitioner.

3. As a result, the order passed by the FTC (IV) Court, George Town, on 20.06.2024 is hereby set aside. The petitioner herein is permitted to cross-examine P.W.1 on the next hearing date . The learned Magistrate shall summon the P.W.1 and permit the petitioner herein to cross-examine P.W.1 on the day on which the witness is present.

4. With this direction, this Criminal Original Petition is allowed.

30.08.2024

Vv

To

1. The IV Fast Track Court,
George Town, Chennai
2. The Public Prosecutor,
High Court of Madras, Chennai.

Dr.G.JAYACHANDRAN,J.



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