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CrI.O.P.No.24771 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2024

CORAM

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

CrI.O.P.No.24771 of 2024

A.Lazer

... Petitioner

Vs.

The State, Represented by
The Sub Inspector of Police,
Central Crime Branch, EDF-111,
Vepery,
Chennai.

... Respondent

PRYAER: Criminal Original Petition filed under Section 528 of BNSS Act, 2023, to call for the records in CrI.M.P.No.58323 of 2023 in C.C.No.923 of 2007 on the file of the Metropolitan Magistrate for Exclusive Trial of CCB Cases (Relating to Cheating Cases in Chennai), and CBCID Metro Cases, Egmore, Chennai - 08.

For Petitioners : Ms.J.Joyce Lydia

For Respondent : Mr.L.Baskaran
Government Advocate



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ORDER

This criminal original petition has been filed challenging the order passed by the Court below dismissing the petition filed by the petitioner under Section 311 of Cr.P.C to recall the prosecution witnesses of P.W.1 to P.W.7, by its order dated 01.03.2024.

2. The petitioner is facing trial before the Court below for the alleged offence under Sections 406, 420 of IPC. The prosecution had examined P.W.1 to P.W.7 from 03.07.2008 till 13.09.2013. None of these witnesses were cross-examined and their evidence was closed. The petitioner filed an application under Section 311 of Cr.P.C to recall P.W.1 to P.W.7 for cross-examination and the said application was dismissed on 01.03.2024 by the Court below.

3. The learned counsel for the petitioner submits that due to unavoidable circumstances and want of relevant documents, the petitioner was unable to cross-examine the above prosecution witnesses. It was further submitted that the case has been registered on the basis of the promissory



note which was said to have been executed on 10.12.2001 and at that time, the petitioner was working in Saudi Arabia. He would further submit that the transaction between the petitioner and the de facto complainant was a business transaction and therefore, the cross-examination of the prosecution witness is necessary.

4. On the other hand, the learned Government Advocate (Crl.Side) appearing on behalf of the respondent submitted that inspite of repeated opportunities given to the petitioner, the above prosecution witnesses were not cross-examined and therefore, the Court below closed the evidence of the prosecution witnesses and hence, no interference is required.

5. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) on behalf of the respondent and perused the materials placed before this Court.

6. Admittedly, the prosecution witnesses were not examined by the petitioner herein. Keeping in view of the facts, the petitioner is justified to recall the prosecution witnesses by setting aside the order passed by the



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Court below in Crl.M.P.No.58323 of 2023 in C.C.No.923 of 2007 dated
01.03.2024.

7. In view of the above, this Criminal Original Petition is allowed by setting aside the order dated 01.03.2024 passed by the learned Metropolitan Magistrate for Exclusive Trial of CCB Cases (Relating to Cheating Cases in Chennai), and CBCID Metro Cases, Egmore, Chennai - 08 in Crl.M.P.No. 58323 of 2023 in C.C.No.923 of 2007. The Court below is directed to fix the date specifically for cross-examination of P.W.1 to P.W.7 and on that date, the petitioner shall examine the above prosecution witnesses P.W.1 to P.W.7 without fail. The petitioner is also directed to bare the cost of processing fee for recalling the witnesses and other expenses spent out by the witnesses for attending the Court.

09.10.2024

Speaking Order/Non-speaking Order

Index :Yes/No

Neutral citation: Yes/No

vji



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- To
1. The learned Metropolitan Magistrate
for Exclusive Trial of CCB Cases
(Relating to Cheating Cases in Chennai)
and CBCID Metro Cases,
Egmore,
Chennai - 08.
 2. The Sub Inspector of Police,
Central Crime Branch, EDF-111,
Vepery,
Chennai.
 3. The Public Prosecutor,
Madras High Court.



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K.GOVINDARAJAN THILAKAVADI, J.

vji

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