



Crl.O.P.No.28886 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.Nos.28886 of 2023 and 1756 of 2024 and
Crl.M.P.Nos.20140 of 2023

Nachiappan

... Petitioner in
Crl.O.P.No.28886 of 2023
and
respondent in Crl.O.P.No.1756/2024

Vs.

Sheik Kadhar Hussain

... Respondent in
Crl.O.P.No.28886 of 2023
and
Petitioner in Crl.O.P.No.1756/2024

Prayer in Crl.O.P.No.28886 of 2023 : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to set aside the order dated 09.10.2023 passed by the learned Metropolitan Magistrate, FTC-V, Saidapet, in Crl.M.P.No.14328 of 2023 in C.C.No.3997 of 2021 in respect of witnesses no.9 to 12.

Prayer in Crl.O.P.No.1756 of 2024: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to set aside the



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order dated 09.10.2023 passed by the learned Metropolitan Magistrate, Fast Track Court V, Saidapet in Crl.M.P.No.14328 of 2023 in C.C.No.3997 of 2021 in respect of witnesses 2 to 4 in the aforesaid witness list and consequently allow witnesses 2 to 4 to be examined on the defense side.

For Petitioner in Crl.O.P.No.28886 of 2023
and

For respondent in Crl.O.P.No.1756/2024 :
Mr.R.Vigneshkumar

For Respondent in Crl.O.P.No.28886 of 2023
and

For Petitioner in Crl.O.P.No.1756/2024 :
Mr.L.Poovendra Perumal

Common Order

Subject matter of challenge in these petitions pertains to the order passed by the Court below in Crl.M.P.No.14328 of 2023 in C.C.No.3997 of 2021, dated 09.10.2023, wherein, the Court below, out of 12 witnesses sought to be examined on the side of the accused, permitted examination of witness no.1 and witnesses nos.5 to 12 and rejected the application insofar as the other witnesses are concerned. The petitioner in Crl.O.P.NO.28086/2023 is aggrieved by the fact that the Court below had allowed the examination of witnesses 9 to 12. To that extent, the complainant has challenged the order in this petition. The petitioner in



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CrI.O.P.No.1756/2024 has questioned the order aggrieved by the fact that witnesses nos.2 to 4 are important witnesses and that the accused was not permitted to examine these witnesses .

2. Heard the learned counsel for the petitioner and the learned counsel for the respondent

3. The petitioner in CrI.O.P.No.1756 of 2024 is facing trial before the Court below for offence under Section 138 of the Negotiable Instruments Act. The examination of witnesses on the side of the complainant was completed and the petitioner / accused was also questioned under Section 313 of Cr.P.C. The petitioner / accused filed CMP.NO.14328 of 2023 to examine 12 witnesses. According to the petitioner / accused, the examination of these witnesses is essential in order to prove his defence and in order to rebut the legal presumption that has been put against the petitioner / accused under Section 139 of NI Act.



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4. The grievance of the petitioner in Crl.O.P.No.28886 of 2023 was confined to permitting witnesses No. 9 to 12 being examined on the side of the accused. The grievance of the petitioner in Crl.O.P.No.1756 of 2024 confined itself to the rejection of examination of the witnesses No. 2 to 4 on the side of the accused.

5. This Court has carefully considered the submissions made on either side and also the materials available on record.

6. The petitioner / accused has taken a defence to the effect that he has handed over the entire cash to the Bank Manager belonging to the ICICI Bank, based on the instruction given by the complainant and therefore, there is no legally enforceable debt / liability on the part of the accused / petitioner. To establish this defence, the petitioner / accused wants to examine witnesses No.2 to 4 who according to the petitioner / accused were present at the time of handing over the cash to the Bank Manager belonging to the ICICI Bank. The Bank Manager belonging to the ICICI Bank has been listed as witness no.7 in the application.



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7. This Court is inclined to modify the order passed by the Court below. The petitioner / accused in Crl.O.P.NO.1756/2024 will be permitted to examine witness Nos.1 to 8 and the request made by the petitioner / accused to examine witnesses No.9 to 12 is hereby rejected. It is brought to the notice of this Court that there is aailable warrant pending against witnesses No.11 and 12. Since the permission sought for by the petitioner / accused is rejected insofar as witnesses No.9 to 12 are concerned, theailable warrant issued to two of the witnesses will stand recalled.

8. In the light of the above discussion, the Court below shall take steps to call witnesses No.1 to 8 for examination before the Court. The Court below shall ensure that the examination of these eight witnesses is completed as early as possible and those 8 witnesses are also cross examined on the same day, they are examined in chief.

9. In the result, these Criminal Original Petitions are allowed to the extent indicated herein above and there shall be a direction to the Court



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below to complete the proceedings in C.C.NO.3997 of 2021 on the file
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N.ANAND VENKATESH, J.

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of learned Metropolitan Magistrate, FTC-V, Saidapet, within a period of
three months from the date of receipt of a copy of this order.

Consequently, connected miscellaneous petition is closed.

05.02.2024

Speaking Order/Non-speaking Order

Index : Yes/No

Neutral citation: Yes/No

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To

1.The Metropolitan Magistrate,
FTC-V, Saidapet,

2.The Public Prosecutor,
High Court, Madras.

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