



CrI.O.P.(MD) No.154 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.01.2024

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P (MD) No.154 of 2024

and

CrI.M.P.(MD)No.106 of 2024

M.David Raj

... Petitioner

Vs.

The State represented by
The Sub Inspector of Police
Thiruthangal Police Station,
(Crime No.552 of 2015

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records relating to the Petition and order in CrI.M.P.No.7225 of 2023 dated 05.12.2023 in C.C.No.738 of 2017 on the file of the learned Judicial Magistrate No.II, Sivakasi, set aside the same and to allow this Criminal Original Petition.

For Petitioner : Ms.Mahalakshmi

For Respondents : Mr.B.Thanga Aravindh
Government Advocate (CrI. side)



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ORDER

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This Criminal Original Petition has been filed to quash the order passed in Crl.M.P.No.7225 of 2023 in C.C.No.738 of 2017 dated 05.12.2023 on the file of the learned Judicial Magistrate No.II, Sivakasi.

2. It is the submission of the learned Counsel for the Petitioner that the learned Judicial Magistrate No.II, Sivakasi, had dismissed the Petition to recall P.W.1 and P.W.2, and thereby denied an opportunity to the Petitioner / Accused. Further, the learned Counsel for the Petitioner submits that the case arose out of direction given by the learned Judicial Magistrate No.II, Sivakasi, while disposing of the case under Section 138 of the Negotiable Instruments Act. Therefore, some questions were left out prior to cross examination regarding the earlier proceedings under Criminal Appeal. Therefore, the Petitioner / Accused had filed above Crl.M.P.No. 7225 of 2023.

3. The learned Judicial Magistrate No.II, Sivakasi, had refused to grant permission to the Petitioner. Aggrieved by the order of the learned Judicial Magistrate No.II, Sivakasi, the Petitioner had approached this



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Court, seeking to set aside the order passed by the learned Judicial Magistrate No.II, Sivakasi, in Crl.M.P.No.7225 of 2023, dated 05.12.2023.

4. The learned Government Advocate (Crl.Side) vehemently objects to the line of arguments of the learned Counsel for the Petitioner stating that the Petitioner had two other similar cases, pending against him. This is the second Petition to recall P.W.1 and P.W.2. Also, in criminal trials, when the witnesses are available before the Court, the learned Counsel for the Accused shall cross-examine them then and there. Here, the learned Counsel for the Accused had not cross-examined the witnesses then and there. Therefore, the order passed by the learned Judicial Magistrate No.II, Sivakasi, is just and appropriate and does not warrant any interference.

5. On perusal of the order passed by the learned Judicial Magistrate No.II, Sivakasi, it is found that the Petitioner herein as an Accused had delayed the trial by four years. After having exhausted the right of cross examination, by cross examining the witnesses, once again, recalling for the very same, questions is only to protract the proceedings and hence, dismissed the Petition.



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6. In Criminal trial, when the witnesses are available before the Court, it is the general principle that the Accused shall cross examine the witnesses then and there. Only in rare cases, the cross examination is deferred and Petitions for recall under Section 311 Cr.P.C are entertained of late, the witnesses are summoned at the whims and fancies of the accused. It amounts to harassing the witnesses by the accused, thereby violating the right of the witnesses, who are also protected by the Constitutional provisions of fair trial.

7. The decision of the Hon'ble Supreme Court in ***Vinod Kumar Vs. State of Punjab*** reported in ***2015(1) MLJ (crl) 288 (SC)***, had deprecated the process to recall the witness at the whims and fancies of the accused and their counsels also. In the same judgment, the Hon'ble Supreme Court had deprecated the practice of repeatedly allowing the Petitions under Section 311 Cr.P.C leniently. Therefore, in the said judgment, the Hon'ble Supreme Court had issued directions to all the High Courts in the Country to circulate this judgment to all the trial Judges in the respective State.



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8. In the light of the above Ruling having been circulated throughout the Country, this having judicial notice to the Court, the Court exercising Power under Section 482 of the Code of Criminal Procedure cannot dilute the Ruling of the Hon'ble Supreme Court. Therefore, this is not a fit case. Hence, this ***Criminal Original Petition*** is dismissed. Consequently, connected Miscellaneous Petition is closed.

Internet: Yes./No
Index: Yes/No
NCC : Yes/No
Ls

08.01.2024

To

- 1.The Judicial Magistrate No.II,
Sivakasi.
- 2.The Sub Inspector of Police
Thiruthangal Police Station.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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SATHI KUMAR SUKUMARA KURUP, J.

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