



Crl.O.P.(MD)No.3138 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 12.04.2024

CORAM :

THE HON'BLE MR.JUSTICE B.PUGALENDHI

Crl.O.P.(MD)No.3138 of 2024

and

Crl.M.P.(MD)No.2507 of 2024

Ebinezer

... Petitioner

Vs.

R.Nambi

... Respondent

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed by the Judicial Magistrate, Valliyoor, in Crl.M.P.No.1825/2023 dated 20.04.2023 in C.C.No.387 of 2021 and allow this petition.

For Petitioner

: Mr.C.Susikumar

ORDER

This Petition is filed challenging the order passed by the Judicial Magistrate, Valliyoor, in Crl.M.P.No.1825/2023 dated 20.04.2023 in C.C.No.387 of 2021.

2. The petitioner is an accused in C.C.No.387 of 2021, under

Section 138 N.I.Act. He has filed an application to recall the witness P.W.1



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for cross examination under Section 311 Cr.P.C, in Crl.M.P.No.1825 of 2023 and the same was dismissed by the trial Court by order dated 20.04.2023.

Against which, this Petition is filed.

3. This Court considered the submissions of the learned counsel for the petitioner.

4. P.W.1 in C.C.No.387 of 2021 was examined in chief on 15.12.2021. However, he was not cross examined on the day by the accused. Thereafter, the accused has filed an application under Section 311 Cr.P.C, to recall the witness for the purpose of cross examination in Crl.M.P.No.887 of 2022 and the same was also ordered by the trial Court, enabling this petitioner to cross examine P.W.1. The petitioner has not availed that opportunity and therefore, the cross examination of P.W.1 was closed on 22.09.2022. Thereafter, this petition is filed on 06.04.2023, again, for the purpose of cross examining the witness P.W.1.

5. This petitioner is facing a criminal prosecution that the cheque issued by him for a sum of Rs.3,00,000/- was returned as “insufficient funds”. It appears that this petitioner, in order to drag the proceedings, has not cross examined the witness in the year 2021, when he was available for cross



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examination and again in the year 2022, when the trial Court permitted this petitioner to cross examine P.W.1 in Crl.M.P.No.887 of 2022. Considering the conduct of this petitioner only, the trial Court has dismissed the application.

6. Though this Court is not inclined to entertain the application, in order to provide one opportunity to the petitioner, enabling him to cross examine the witness P.W.1, this Criminal Original Petition is allowed with a cost of Rs.20,000/- to be paid by the petitioner to the defacto complainant within a period of four weeks. On receipt of payment, the trial Court shall permit the petitioner to cross examine the witness P.W.1. If the petitioner fails to pay the amount, the trial Court shall proceed further with the materials available, and pass suitable orders. The order passed by the Judicial Magistrate, Valliyoor, in Crl.M.P.No.1825/2023 dated 20.04.2023 in C.C.No. 387 of 2021 is hereby quashed to this extent. Consequently, connected Miscellaneous Petition is closed.

12.04.2024

Index : Yes/No
Internet: Yes
NCC : Yes/No
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B.PUGALENDHI,J

LS

To

1. The Judicial Magistrate,
Valliyoor.
2. The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

Order made in
Crl.O.P.(MD)No.3138 of 2024

12.04.2024