



Crl.O.P.(MD)No.9017 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2024

CORAM

THE HON'BLE MR.JUSTICE B.PUGALENDHI

Crl.O.P.(MD)No.9017 of 2024
and
Crl.M.P(MD)No.6186 of 2024

Maheswaran ... Petitioner/Petitioner/Sole Accused

Vs.

Balakrishnammal ... Respondent/Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records of the order in Crl.M.P.No.2311 of 2024 in S.T.C.No.832 of 2010 on the file of the learned Judicial Magistrate Court, Rajapalayam, dated 23.05.2024 and set aside the same.

For Petitioner : Mr.S.Manojkumar

ORDER

The petitioner, an accused in S.T.C.No.832 of 2010, has filed an application to recall P.W.1 for the purpose of cross examination.

P.W.1 was examined in chief on 05.08.2010 and the exhibits 1 to 8



Crl.O.P.(MD)No.9017 of 2024

were marked on the side of the prosecution on the same day itself.

However, the petitioner has not examined the witness. Therefore, the trial Court has proceeded with the case and the questioning under Section 313(1)(b) of Cr.P.C was also over on 09.08.2010. Thereafter, the petitioner has failed to appear before the trial Court. After 13 years, the accused has surrendered voluntarily and the warrant issued against him has been recalled and the case has been posted for defence side evidence. At that time, the petitioner has filed this application to recall P.W.1 for the purpose of cross examination. The said application filed by the petitioner in Crl.M.P.No.2311 of 2024 was dismissed by the trial Court by an order dated 23.05.2024 on the ground that the petitioner has not availed the opportunity of cross examination, though the witness was available for the cross examination. The same is under challenge before this Court.

2.This Court considered the submissions of the learned counsel for the petitioner and also perused the orders passed in Cr.M.P.No.2311 of 2024, dated 23.05.2024.



CrI.O.P.(MD)No.9017 of 2024

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3.It is very unfortunate that a summary proceedings initiated in the year 2010 is kept pending for the appearance of the petitioner. P.W.1 was examined on 05.08.2010 and on the same day, the documents were also marked. However, the petitioner has failed to cross examine the witnesses on 05.08.2010. Thereafter, without providing sufficient opportunity, it appears that the trial Court questioned him under Section 313(1)(b) of Cr.P.C. on 09.08.2010. It appears to be not proper on the side of the trial Court. At the same time, this Court is not inclined to condone the conduct of the petitioner in evading the trial for the past 13 years. The fact remains that the petitioner has not cross examined P.W.1. The case has been instituted for dishonour of cheque and that too for Rs.7 lakhs and therefore, the petitioner has to be provided with an opportunity to cross examine P.W.1.

4.Considering the conduct of the petitioner in evading the trial for the past 13 years, this petition is allowed on condition to deposit a sum of Rs.50,000/- to the credit of S.T.C.No.832 of 2010 within a



CrI.O.P.(MD)No.9017 of 2024

period of two weeks from the date of receipt of a copy of this order.

In the event, if the petitioner pays the sum of Rs.50,000/- as directed by this Court, the trial Court shall provide him an opportunity by fixing a date for cross examination of P.W.1. The trial Court shall decide the fate of this deposit, based on the outcome of the trial. In the event, if the petitioner fails to utilise the opportunity, it is up to the trial Court to proceed further with the case and to decide the case on its merits. Consequently, connected miscellaneous petition is closed.

21.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Judicial Magistrate Court, Rajapalayam.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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CrI.O.P.(MD)No.9017 of 2024



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Crl.O.P.(MD)No.9017 of 2024

B.PUGALENDHI, J.

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Crl.O.P.(MD)No.9017 of 2024

21.06.2024