



CRL OP(MD). No.12484 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date : 14.02.2024

CORAM

The Hon`ble Mr.Justice M. DHANDAPANI

**CRL OP(MD) No.12484 of 2022 and
Crl.M.P.(MD) No.7904 of 2022**

Jaheer Hussain

... Petitioner

Vs

Bakrudeen Ali Ahamed

... Respondent

PRAYER :- Criminal Original Petition filed under section 482 of Cr.P.C., to call for the records to set aside the order dated 16.06.2022 in Crl. M.P.No. 1062 of 2022 by the learned Judicial Magistrate Court, Valliyoor by allowing this Original Petition.

For Petitioner : M/s. M. Kannan
For Respondent : M/s. B. Muneeswaran

ORDER

This petition has been filed to quash the order dated 16.06.2022 in Crl.M.P.No.1062/2022.



CRL OP(MD). No.12484 of 2022

WEB COPY

2. The respondent lent a sum of Rs.7 lakhs to the petitioner and since the said amount was not returned, the respondent has presented the cheque, which was issued by the petitioner. However, the cheque got dishonoured and hence, the respondent initiated the proceedings under Section 138 of the Negotiable Instruments Act. Pending the said proceedings before the Court below, the petitioner has filed a petition for recalling a witness, viz., Eswaran. However, the said petition came to be dismissed, against which, the petitioner is before this court with this petition.

3. The learned counsel for the petitioner would submit that the petitioner has issued the cheque in question in favour of one Eswaran for valuable consideration. However, after repayment, the said Eswaran has not returned the cheque to the petitioner, instead he had handed over the cheque to one Hayath Ali of FMA traders on whose instance, the respondent has initiated the present proceedings. The learned counsel would further submit that since it is the case of the petitioner that the cheque in question was issued to Eswaran, it is incumbent on the part of



CRL OP(MD). No.12484 of 2022

the petitioner to examine him as a witness and hence, the petition came to be filed. He would submit that in order to prove the case of the petitioner, necessarily Eswaran has to be examined and the petitioner's rights have to be protected and hence, prays this court to fix a date for examining Eswaran in chief and cross, on behalf of the defence.

4. However, the learned counsel for the respondent would submit that Eswaran is no way connected with the case and he strongly opposes the petition.

5. Considering the facts and circumstances of the case and considering the fact that mere examining Eswaran will not prejudice the complainant and the petitioner has every right to examine any witness as per Section 311 Cr.P.C. at any time and at any stage. Hence, in order to afford an opportunity to the petitioner herein to examine Eswaran in chief and cross, this petition is disposed of with the following direction:

The trial court shall issue notice to Eswaran fixing a date of hearing and on which date, the petitioner herein shall cross-examine the said witness, in which case, the petitioner shall pay a cost of Rs.5,000/-



CRL OP(MD). No.12484 of 2022

(Rupees five thousand only) to Eswaran and the trial court shall close the defence witness on the said date and conclude the trial within a period of three months from the date of receipt of a copy of this order. Consequently connected Miscellaneous Petition is closed.

14.02.2024

NCC : Yes/No
Index : Yes/No
RR

TO

The Judicial Magistrate Court,
Valliyoar.



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CRL OP(MD). No.12484 of 2022

M.DHANDAPANI. J

RR

**ORDER
IN
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