



CRL OP(MD). No.10434 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 12.07.2024

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THE HON'BLE MR.JUSTICE B.PUGALENDHI

CRL OP(MD). No.10434 of 2024

Suresh @ Thangasudalai

... Petitioner

Vs

The Inspector of Police,
Maniyachi Police Station,
Thoothukudi District.
(Crime No. 20/2016)

... Respondent

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed in the recall petition in Cr. M.P No. 575/2023 in S.C No. 310/2016 dated 08.11.2023 on the file of the Sub Court, Kovilpatti, within stipulated period.

For Petitioner : Mr.Suyambulinga Bharathi.K

For Respondent : Mr.M.Sakthi Kumar
Government Advocate (Crl. Side)



CRL OP(MD), No.10434 of 2024

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ORDER

This criminal original petition has been filed as against the order passed in the recall petition in Cr.M.P No. 575 of 2023 in S.C No. 310 of 2016 dated 08.11.2023 on the file of the Sub Court, Kovilpatti.

2. The learned Counsel for the petitioner submits that the application filed by the petitioner under Section 311 of Cr.P.C was allowed by the trial Court on 14.08.2023 and the witnesses were also directed to be present on 05.09.2023. However, the witnesses were not present and therefore, the case was adjourned to 09.10.2023 and again the case was adjourned to 08.11.2023. On 08.11.2023, P.W.1 alone was present, but the accused were not present. Since the accused were not present, it appears that the learned Counsel for the petitioner had made a request for an adjournment and the trial Court had dismissed the application stating that the petitioner has not cross-examined the witnesses. Therefore, the petitioner had filed this application to set aside the order passed in the recall petition in Cr.M.P.No.575 of 2023 in S.C.No.310 of 2016.



CRL OP(MD). No.10434 of 2024

3. Further, the learned Counsel for the petitioner submits that Non-bailable Warrant was issued as against the petitioner. Thereafter, the petitioner surrendered and moved this application.

4. The petitioner is facing the charge for the offence under Section 397 of IPC. The petitioner has filed an application seeking to recall P.W. 1, P.W.7, P.W.8, P.W.15 and P.W.16 and the same was allowed by the trial Court. However, the petitioner herein has not availed the opportunity. In order to provide one more opportunity to the petitioner, this Court is inclined to allow this petition.

5. Accordingly, this Criminal Original Petition is allowed and the impugned order is set aside. The petitioner is directed to file a fresh application along with an affidavit of undertaking that he will cross-examine the witnesses on the day when the witnesses are present. The petitioner is directed to pay a sum of Rs.3,000/- to each witnesses. On such undertaking and a payment of Rs.15,000/-, the trial Court shall provide one more opportunity to the petitioner herein. In the event, if the petitioner fails to cross-examine the witnesses on the said date, the trial



CRL OP(MD). No.10434 of 2024

Court shall proceed further and dispose the case in accordance with law.

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12.07.2024

NCC : Yes/No

Index : Yes/No

Internet: Yes

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To

1. The Inspector of Police,
Maniyachi Police Station,
Thoothukudi District.

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

B.PUGALENDHI,J

4/5



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CRL OP(MD), No.10434 of 2024

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Order made in
Crl.O.P.(MD)No.10434 of 2024

12.07.2024