



CRL OP(MD). No.19327 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date : 29.02.2024

CORAM

The Hon`ble Mr.Justice M. DHANDAPANI

CRL OP(MD) No.19327 of 2022
and Crl.M.P(MD) No.13109 of 2022

Yesupatham ... Petitioner/Petitioner/Complainant

Vs.

1. Lazer

2. George

3. P.Valsalam ... Respondents/Respondents/Accused

PRAYER :- Criminal Original Petition file under section 482 of Cr.P.C., to set aside the order passed in Crl.M.P.(MD).No.1064 of 2021 in C.C.No.1323 of 2018, dated 22.03.2022 on the file of the Judicial Magistrate No.II, Padmanabhapuram and allow this petition.

For Petitioner : Mr.Herold Singh.S.C

For Respondents : Mr.A.Balakrishnan



CRL OP(MD). No.19327 of 2022

ORDER

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This petition has been filed to set aside the order passed in CrI.M.P.(MD).No.1064 of 2021 in C.C.No.1323 of 2018, dated 22.03.2022 on the file of the Judicial Magistrate No.II, Padmanabhapuram, and allow this petition.

2.The petitioners were implicated for the offence under Sections 418, 420, 464, 468, 471 r/w. 34 of IPC. The petitioner is the complainant in C.C.No.1323 of 2018 on the file of the learned Judicial Magistrate No.II, Padmanabhapuram and he filed a complaint under Section 200 r/w. 190(i) of Cr.P.C before the learned Judicial Magistrate, Padmanabhapuram as against the respondents.

3. The fact of the case is that the petitioner is the owner of the certain lands. He entered a lease agreement with the respondents accused. However, the respondents/accused prepared bogus receipt and refused to vacate the premises. Thereby, the private complaint has been filed by the petitioner. Similarly, the respondents filed a suit in O.S.No.126 of 2015 on the file of the Sub Court, Padmanabhapuram and the same is pending.



CRL OP(MD). No.19327 of 2022

In the mean while, the petitioner filed a petition under Section 45 of the Indian Evidence Act before the Court below, for sending the said receipt for expert opinion to find out that whether the petitioner has signed in the said receipt or not, that was allowed and a Advocate Commissioner was also appointed. Subsequently, he filed a petition under Section 91 of Cr.P.C., before the learned Judicial Magistrate No.II, Padmanabhapuram, to secure the lease deed, receipts, other documents, which were marked before the Court below in O.S.No.126 of 2015 on the file of the Sub Court, Padmanabhapuram for sending the same to the expert opinion, but the same was rejected, vide order, dated 22.03.2022, on the ground that the petitioner is at liberty to examine the evidences under the proceeding under Section 246(VI) of Cr.P.C, when the petitioner's evidence is in progress. Challenging the same, the present petition has been filed.

4. The learned counsel for the petitioner would submit that unless the lease deed or the said receipt is not send for expert opinion, prejudice will be caused to the petitioner. Hence, he prays for appropriate orders.



CRL OP(MD). No.19327 of 2022

5. The learned counsel for the respondents would submit that the concerned trial Court has not closed the application filed under Section 91 of Cr.P.C, by the petitioner, liberty was granted to the petitioner to renew the application, when the prosecution evidence is in progress in terms of Section 246(VI) of Cr.P.C.

6. In view of the above, without interfering into the impugned order passed by the learned Judicial Magistrate No.II, Padmanabhapuram, dated 22.03.2024, the petitioner is at liberty to file appropriate petition before the concerned trial Court in terms of Section 246(VI) of Cr.P.C., when the prosecution witness is in progress as already directed by the concerned trial Court. In case of filing such application by the petitioner, the concerned trial Court shall pass appropriate orders.

7. With the above said, this petition is disposed of. Consequently, connected Miscellaneous Petition is closed.

29.02.2024

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CRL OP(MD). No.19327 of 2022

M.DHANDAPANI. J

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TO

1. The learned Judicial Magistrate No.II,
Padmanabhapuram,
Kanniyakumari District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

**ORDER
IN
CRL OP(MD) No.19327 of 2022**

Date : 29.02.2024