



Crl.O.P.(MD)No.14728 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 21.06.2024

CORAM :

THE HON'BLE MR.JUSTICE B.PUGALENDHI

Crl.O.P.(MD)No.14728 of 2023

Elanthendral

... Petitioner

Vs.

State represented by
The Inspector of Police,
Town East Police Station,
Thanjavur
(Cr.No.722 of 2016)

... Respondent

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. 884 of 2023 in C.C.No.155 of 2019 on the file of the Judicial Magistrate No.I, Thanjavur dated 22.05.2023 and set aside the same and consequently, direct the Judicial Magistrate No.I, Thanjavur to recall PW1, PW3 to PW5.

For Petitioner

: Mr.M.Karunanithi

For Respondent

: Mr.B.Thanga Aravindh,
Government Advocate(Crl.side)



WEB COPY



Crl.O.P.(MD)No.14728 of 2023

ORDER

The petitioner, who is an accused in C.C.No.155 of 2019, has filed this petition to set aside the order passed by the learned Judicial Magistrate No.I, Thanjavur in Crl.M.P.No.884 of 2023 dated 22.05.2023. The petitioner has filed the said petition under Section 311 Cr.P.C., to recall the witnesses and the same was dismissed on the ground that PW1 was examined on 13.12.2019 and PW.3, PW.4 & PW.5 were examined on 16.12.2020 and after a period of three years, at the stage of examination of the Investigating Officer, the petitioner has filed this petition.

2.The learned counsel appearing for the petitioner submits that it is a case of Section 326 IPC and at the time of examination of witnesses, the learned counsel for the petitioner was held up in the another Court and his junior counsel only was present in the Court. Further, the junior counsel hesitated to cross-examine the case, since it was registered under Section 326 IPC. Therefore, he prays that one more opportunity to the petitioner be provided by allowing this petition.



WEB COPY

3.This Court considered the submissions of the learned counsel for the petitioner and perused the materials placed before this Court.

4.The case is of the year 2019. P.W.1 was examined in chief in the year 2019 itself. However, the petitioner failed to cross-examine him on that day and also failed to file a petition immediately, to recall the witness. Now, at the stage of examination of Investigating Officer, the petitioner filed the petition to recall the witness for cross-examination. Though this Court is not inclined to condone this conduct of the petitioner in not filing the petition immediately, this Court is of the view that the petitioner has to be provided with one more opportunity, since he is facing charges under Section 326 IPC. Accordingly, this criminal original petition is allowed with a cost of Rs.2,500/- each payable to the witnesses.

5.On payment of cost to the witnesses, the learned Judicial Magistrate No.I, Thanjavur shall consider the case of the petitioner sympathetically and shall provide with one opportunity to cross-examine the witnesses viz, PW.1, PW.3, PW.4 & PW.5 on a particular day. The



CrI.O.P.(MD)No.14728 of 2023

learned Judicial Magistrate No.I, Thanjavur shall fix the date. In the event of non-payment of cost, the trial Court shall proceed with the case with the available materials and dispose the case on its merits.

21.06.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes
gns

To

- 1.The Judicial Magistrate No.I,
Thanjavur.
- 2.The Inspector of Police,
Town East Police Station,
Thanjavur.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.O.P.(MD)No.14728 of 2023

B.PUGALENDHI,J

gns

Crl.O.P.(MD)No.14728 of 2023

21.06.2024