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Crl.O.P.No. 2642 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.2642 of 2025

Jayaraman

... Petitioner

Vs.

Thirumeni

... Respondent

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 to set aside the order passed by the XXV Metropolitan Magistrate, Egmore, Chennai in Crl.M.P.No.60704 of 2024 in STC No.9917 of 2022, by allowing this Criminal Original Petition and to grant the petitioner/accused a chance to cross examine the respondent/complainant to bring the actual facts of the case.

For Petitioner : Mr.M.Sathiavel

For Respondent : Mr.Ilamuhil



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ORDER

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This Criminal Original Petition has been filed challenging the order passed in Crl.M.P.No.60704 of 2024 in STC No.9917 of 2022 dated 03.01.2025 on the file of the learned XXV Metropolitan Magistrate, Egmore, Chennai whereby the application filed under Section 311 of Cr.P.C for recalling PW1 for cross examination was dismissed.

2. The petitioner is the accused in a case based on a complaint lodged by the respondent for the offence under Section 138 of Negotiable Instruments Act, 1881. The respondent was examined as PW1. However, the learned counsel for the petitioner failed to cross examine PW1 on several occasions. Thereafter, the petitioner filed an application to recall PW1. The matter was posted for questioning under Section 313 of Cr.P.C and the application was allowed on payment of costs with the date for cross examination being fixed. Despite the petitioner paying the costs, the learned counsel for the petitioner, due to his age and inability to attend, failed to appear on the scheduled date and thus not cross examined PW1. Thereafter, a new counsel was engaged by the petitioner, who filed another application to recall PW1 for cross examination. However, the



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application was dismissed on the ground that the earlier application had been allowed and the petitioner had failed to cross examine PW1 as directed. It is undisputed that PW1 has not been subjected to cross examination as of yet. The case is now posted for hearing on 17.02.2025. Therefore, the petitioner seeks one final opportunity to cross examine PW1 on payment of a cost of Rs.2,000/-.

3. In view of the above facts, this Court is inclined to grant one final opportunity to the petitioner to cross examine PW1 on payment of a cost of Rs.2,000/-. The petitioner shall cross examine PW1 on 17.02.2025, failing which the Trial Court is directed to proceed with the trial in accordance with law. It is made clear that the respondent shall appear on 17.02.2025 before the Trial Court and cooperate with the petitioner in completing the cross examination on the same day.

4. Accordingly, the Criminal Original Petition stands allowed.

13.02.2025

Neutral citation : Yes/No
Speaking/non-speaking order



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To

1. XXV Metropolitan Magistrate, Egmore, Chennai
2. The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN, J.

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