



Crl.O.P.No.5668 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2025

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.5668 of 2025
and Crl.M.P.No.3671 of 2025

J.Jayapaulmohan

... Petitioner

Vs

1. J.Sam David

2. State of Tamil Nadu

Represented By,

The Inspector of Police (L and O),

K-2, Ayyanavaram Police Station,

Chennai - 600 023.

... Respondents

PRAYER: Criminal Original Petition is filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023, to set aside the order dated 30.12.2024 passed by the XXVI Metropolitan Magistrate Judge, Egmore in Crl.M.P.No.73491 of 2024 in STC.No.9417 of 2023 and to allow the Crl.O.P.No.SR.5442 of 2025.

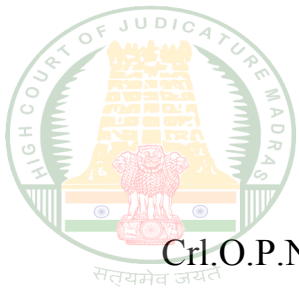
For Petitioner : Mr.T.S.Kani

For R2 : Mr.K.M.D.Muhilan

Government Advocate (Crl.side)

ORDER

This petition has been filed to set aside the order dated 30.12.2024 passed by the XXVI Metropolitan Magistrate Judge, Egmore in Crl.M.P.No.73491 of 2024 in STC.No.9417 of 2023 and to allow the



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Crl.O.P.No.SR.5442 of 2025.

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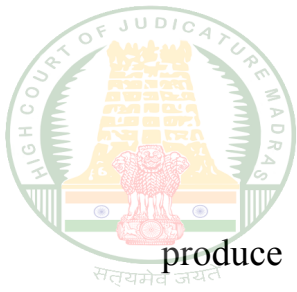
2. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.side) for the second respondent and perused the materials available on record.

3. The petitioner is an accused in the complaint lodged by the first respondent for the offence punishable under Section 138 of Negotiable Instruments Act. After examining the witnesses on both sides, when the matter is posted for arguments, the petitioner filed an application under Section 91 of Cr.P.C, thereby directing the second respondent to produce the case diary. The case diary is not a public document.

4. It is relevant to extract Section 172(3) of Cr.P.C as follows:-

“172(3) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of section 161 or section 145, as the case may be, of the Indian Evidence Act, 1872 (1 of 1872), shall apply.”

5. Therefore, the petitioner cannot call for the second respondent to



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produce the case diary. That apart, a perusal of the FIR registered in Crime No.65 of 2025 on the file of the second respondent revealed that there is absolutely no whisper about the cheque which was allegedly stolen by the first respondent.

6. Therefore, the Trial Court had rightly dismissed the application filed under Section 91 of Cr.P.C and this Court finds no infirmity or illegality in the order dated 30.12.2024 passed by the XXVI Metropolitan Magistrate Judge, Egmore in Crl.M.P.No.73491 of 2024 in STC.No.9417 of 2023.

7. Accordingly, this Criminal Original petition is dismissed. Consequently, connected Miscellaneous petition is closed.

28.02.2025

Internet:Yes
Index:Yes/No
Speaking/Non speaking order
mn



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G.K.ILANTHIRAIYAN. J.

mn

To

1. The XXVI Metropolitan Magistrate Judge,
Egmore.
2. The Inspector of Police (L and O),
K-2, Ayyanavaram Police Station,
Chennai - 600 023.
3. The Public Prosecutor,
High Court, Madras.

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