



Crl.O.P.No. 23030 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2025

CORAM:

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

Crl.O.P.No.23030 of 2024 and
Crl.M.P.No.13105 of 2024

V.Loganathan

... Petitioner

Vs.

P.Edwin

... Respondent

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 to call for the entire records relating to the order dated 21.08.2024 passed by the learned III Additional Judge, City Civil Court in Crl.M.P.Sr.No.24833 of 2024 in Crl.A.No.306 of 2024 and set aside the same and consequently allow the said Crl.M.P.Sr.No.24833 of 2024 in Crl.A.No.306 of 2024.

For Petitioner : Mr.V.Krishnamoorthy

For Respondent : Mr.G.Palani

ORDER

This Criminal Original Petition has been filed challenging the order passed in Crl.M.P.Sr.No.24833 of 2024 in Crl.A.No.306 of 2024



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dated 21.08.2024 on the file of the learned III Additional Judge, City Civil Court thereby rejecting the petition filed under Section 391(2) of Cr.P.C as not maintainable.

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. During the pendency of the trial, the petitioner filed an application to recall PW1 for further cross examination in Crl.M.P.No.32817 of 2022 in C.C.No.5735 of 2018. The application was dismissed by an order dated 13.12.2022. The petitioner then challenged this order before this Court in Crl.O.P.No.396 of 2023. While the said petition was pending, the trial was concluded and the petitioner was convicted for the offence under Section 138 of Negotiable Instruments Act, 1881 and sentenced to undergo imprisonment. Aggrieved by the same, the petitioner preferred an appeal in C.A.No.306 of 2023 before the III Additional City Civil Court at Chennai. During the pendency of the appeal, the petitioner filed an application under Section 391(2) of Cr.P.C seeking permission to adduce additional evidence,



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however, it was rejected as not maintainable on the ground that PW1 had already been cross examined by the petitioner. The Appellate Court, without even numbering the petition, rejected the same under the misconception that it was not maintainable.

3. In view of the above, the order dated 21.08.2024 passed by the learned III Additional Judge, City Civil Court in Crl.M.P.Sr.No.24833 of 2024 in Crl.A.No.306 of 2024 as not maintainable, is hereby set aside. The petitioner is directed to file a fresh petition under Section 391(2) of Cr.P.C to recall PW1. On receipt of the petition, the Appellate Court is directed to number the same and pass orders on merits in accordance with law.

4. Accordingly, the Criminal Original Petition stands allowed. Consequently, connected miscellaneous petition is closed.

13.02.2025

Neutral citation : Yes/No
Speaking/non-speaking order
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G.K.ILANTHIRAIYAN, J.

shk

To

1. III Additional Judge, City Civil Court
2. The Public Prosecutor,
High Court, Madras.

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