



Crl.O.P.No.32670 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.01.2025

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.O.P.No.32670 of 2024

and

Crl.M.P.No.18592 of 2024

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T.G.S.Mahesh

(His name is shown as Triplicani Gowrishankar

Mahesh - Additional Director in the lower Court order copy)

.. Petitioner

Vs.

Sivagnanam G.Illanahi

.. Respondent

Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, praying to set aside the order dated 29.11.2024 made in Crl.M.P.No.13259 of 2024 in C.C.No.229 of 2019 on the file of the Metropolitan Magistrate, Fast Track Court at Magisterial Level-IV, George Town, Chennai-600 001, by allowing this Criminal Original Petition.

For petitioner : Mr.G.Saravanan for M/s.A.V.Arun

For respondent: Mr.Arun Anbumani for Mr.S.Sakthivel

ORDER

Criminal Original Petition is filed under Section 528 of the Bharatiya



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Nagarik Suraksha Sanhita, 2023, praying to set aside the order dated 29.11.2024 made in Crl.M.P.No.13259 of 2024 in C.C.No.229 of 2019 on the file of the Metropolitan Magistrate, Fast Track Court at Magisterial Level-IV, George Town, Chennai-600 001.

2. Earlier, the petitioner has filed recall petition for examination of witness(es) and the petitioner/A2 was examined as defence witness and at that time, certain questions were raised and in order to clear the ambiguity, the petitioner wanted to mark certain documents and though the petitioner has stated the reason for recalling the witness and marking the document by examining particular witness, the learned Magistrate failed to consider the said petition and the reasons stated in the petition for dismissing the recall petition, are not correct.

3. Learned counsel for the respondent/complainant submitted that already, the petitioner was examined as defence witness and even once again, he was also recalled and examined and subsequently, the evidence on the side of defence, was closed. The arguments of the respondent/complainant was also over. Subsequently, even after obtaining time for arguments, the petitioner herein has filed the recall petition and sought for examining the witnesses.



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4. Learned counsel for the respondent further submitted that as per Section 131 of the Negotiable Instruments Act, the process of recall and reopen the witness, cannot be ratified. In order to protract the proceedings, the petitioner has filed this petition after arguments and the same is liable to be dismissed.

5. Heard both sides and perused the materials available on record.

6. The petition in C.C.No.229 of 2019/complaint was filed under Section 138 and 141 read with Section 142 of the Negotiable Instruments Act and Section 200 Cr.P.C., to reopen and recall the defence side witness before the trial Court. The learned Magistrate has already given sufficient opportunities to both parties and after completion of the evidence, the case was posted for arguments. The arguments of the respondent/complainant were also heard by the learned Magistrate and at the time when the learned Magistrate was about to take the case to hear the respondent's side arguments, and when the petitioner/defence side arguments were going on and hearing, the petition to recall the witness, was filed by the petitioner/A2. The document(s) in question were available prior to the filing of the complaint itself. The complaint filed is of the year 2019 and



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the document(s) now sought to be marked, is/are of the year 2016.

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7. In the above facts and circumstances, since the learned Magistrate had given sufficient opportunities, the petitioner did not avail the same and only in order to protract the case, the recall petition was filed before the trial Court, which is not automatic and it has to be only filed to ensure fair trial before the trial Court and not for filling up the lacuna. Hence, the petitioner/A2 is not entitled to the relief sought for in this petition, as already, the trial Court had granted sufficient opportunities to the petitioner and the petitioner has failed to avail the same. Therefore, there is no reason to interfere with the impugned order passed by the learned Magistrate.

8. With the above observations, this petition is dismissed. Consequently, CrI.M.P.No.18592 of 2024 is closed.

22.01.2025

CS

To

The Metropolitan Magistrate,
Fast Track Court at Magisterial Level-IV,
George Town, Chennai-600 001

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