



CRL O.P. (MD) No.7814 of 2025

IN THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 28.04.2025

CORAM

The Hon`ble Mr.Justice P.DHANABAL

CRL OP. (MD) No.7814 of 2025
and CrI. M.P. (MD) No.5853 of 2025

M. Ganesan S/o. Madasamy ... Petitioner /Accused No.2
Vs

State rep. by:-

The Inspector of Police,
Tirupparankundram Police Station,
Madurai.
[Cr. No.84 of 2018]

... Respondent

PRAYER: -The Criminal Original Petition is filed under Section 528 of B.N.S.S., praying to call for records pertaining to CrI. M.P. No.2371 of 2025 dated 15.04.2025 in C.C. No.373 of 2018 on the file of the Judicial Magistrate Court No.VI, Madurai and to set aside the same.

For Petitioner : Mr. John.J.

For Respondent : Mr. T. Sakthikumar
Government Advocate
[Criminal side]

ORDER

This Criminal Original Petition has been filed by the petitioner to set aside the order passed by the learned Judicial Magistrate No.VI,

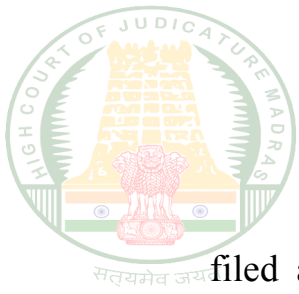


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Madurai in Crl. M.P. No.2371 of 2025 dated 15.04.2025 in C.C. No.373

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of 2018.

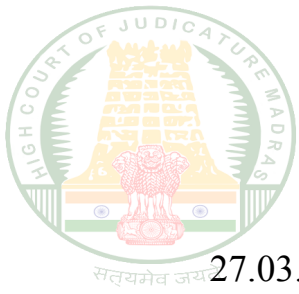
2. The learned counsel appearing for the petitioner would submit that the petitioner is the 2nd accused in C.C. No.373 of 2018 on the file of the Judicial Magistrate Court No.VI, Madurai. The charges levelled against the petitioner are under Sections 392 and 114 of IPC. Originally the case was posted on 28.09.2018 for the prosecution side evidence. The prosecution issued summons to the witnesses LW7 to LW12 on 22.02.2024. But LW8 and LW9 did not appear on that date before the trial Court. LW8 appeared only on 05.12.2024 and LW9 appeared on 20.02.2025. They were not cross examined by the accused. Thereafter, on 11.03.2025, the petitioner had filed an application to recall PW9 and the same was allowed on payment of cost of Rs.1,000/- and due to the non-appearance of PW9, the case was posted for cross examination of PW9 by the petitioner on 20.03.2025, 27.03.2025 and 04.04.2025. The date of hearing was wrongly noted by the counsel of the petitioner as 09.04.2025 instead of 08.04.2025. In the meantime, PW9 had appeared on 08.04.2025 and her evidence was closed. Immediately the petitioner



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filed an application to recall PW9 on 15.04.2025, but the trial Court dismissed the same through an order in Crl. M.P. No.2371 of 2025 by stating that the case was posted for arguments and at that stage, the petition was filed for recalling PW9, already the petitioner filed an application to recall PW9 and the same was allowed on 11.03.2025 on payment of cost of Rs.1,000/- and the case was posted for cross examination of PW9 by the petitioner on 20.03.2025. But due to non-appearance of PW9, the case was frequently adjourned. However, the date of hearing was wrongly noted by the counsel of the petitioner as 09.04.2025 instead of 08.04.2025. PW9 is a vital witness, thereby she has to be cross examined by the petitioner. Therefore, the order passed by the Trial Court is liable to be set aside.

3. The learned Government Advocate (Criminal side) appearing for the respondent would submit that already sufficient opportunity was given to the petitioner to cross examine the witness and the PW9 was examined on 20.02.2025, but not cross examined by the petitioner. Thereafter, the petitioner filed an application to recall PW9 and the same was allowed and thereafter, the case was posted on 20.03.2025,



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27.03.2025 and 04.04.2025. PW9 appeared on 08.04.2025, but the petitioner did not cross examine PW9. Therefore, the trial Court closed the evidence of PW9. Again the petitioner filed a petition in Crl. M.P. No.2371 of 2025 and the same was dismissed by the trial Court vide order 15.04.2025 by stating that the case was posted for arguments and at that stage, the petitioner has filed the application to recall PW9 and therefore, the order passed by the trial Court is in order and the present petition is liable to be dismissed.

4. Heard both sides and perused the entire materials available on record.

5. It is an admitted fact that PW9 was chief examined on 20.02.2025, but on that date, PW 9 was not cross examined by the petitioner. Thereafter, the petitioner filed an application to recall PW9 for cross examination and the same was allowed on payment of cost of Rs.1,000/- and the case was posted on 20.03.2025 for cross examination of PW9. On that date, PW9 did not appear and hence the case was posted to 27.03.2025 and again on 04.04.2025. But PW9 did not appear

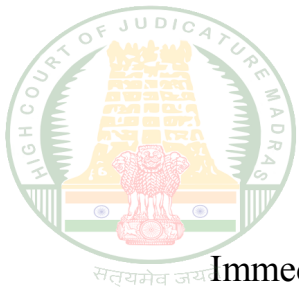


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on those dates. Again the case was posted on 08.04.2025. On that date, the PW9 was present, but the petitioner did not appear. The reason stated by the petitioner is that the petitioner's counsel had wrongly noted the hearing date as 09.04.2025 instead of 08.04.2025. Thereafter, the petitioner, once again, filed a recall petition to cross examine the PW9 in Crl. M.P. No.2371 of 2025 and the same was dismissed by the trial Court as the case is at the stage of arguments and already the petitioner had filed a similar petition and the same was allowed and when PW9 appeared, the petitioner did not appear before the Court to cross examine PW9 and the reason stated by the petitioner that the hearing date was wrongly noted by his counsel is not satisfactory.

6. It is not disputed by the prosecution side that after allowing the earlier application filed by the petitioner to recall the PW9, the case was posted for cross examination of PW9 on 20.03.2025, 27.03.2025 and 04.04.2025. But on those dates, PW9 did not appear. In the meantime, the case was posted on 08.04.2025, but the learned counsel appearing for the petitioner wrongly noted the hearing date as 09.04.2025 instead of 08.04.2025 and hence the evidence of PW9 was closed on that date.



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Immediately, the petitioner had again filed a recall petition on 15.04.2025 itself, but the same was dismissed. Therefore, when the chance was given to the prosecution and due to the non-appearance of PW9, the petitioner could not cross examine her, the learned Magistrate ought to have given one more chance to the petitioner to cross examine the witness.

7. Therefore, in order to meet ends of justice and to give a fair opportunity to the petitioner, it is appropriate to allow this petition by setting aside the order passed by the trial Court. Further, it is an admitted fact that the petitioner had already paid a sum of Rs.1,000/- towards cost as per the order of the trial Court, hence this Court is inclined to allow this petition without any cost.

8. In view of the above discussions, this Criminal Original Petition is allowed. The impugned order passed by the trial Court in Crl. M.P. No.2371 of 2025 dated 15.04.2025 is set aside and the trial Court is directed to issue summons to PW9 by fixing a date for cross examination by the petitioner and on the date of appearance of PW9, without any



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adjournment, the petitioner has to cross examine the witness.

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Consequently, the connected miscellaneous petition is closed.

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index: Yes/No

Internet: Yes/No

Speaking/Non Speaking order

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To

- 1.The Judicial Magistrate Court No.VI, Madurai.
2. The Public Prosecutor, Madurai Bench of Madras High Court,
- 3 .The Inspector of Police, Tirupparankundram Police Station, Madurai.

P.DHANABAL,J

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