



Crl.O.P.(MD)No.9620 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.06.2025

CORAM :

THE HON'BLE MR.JUSTICE B.PUGALENDHI

Crl.OP(MD)No.9620 of 2025 and
Crl.MP(MD) No.7028 of 2025

Mahendran

... Petitioner

Vs

M.Sankaran

...Respondent

Prayer : Criminal Original Petition filed under Section 528 of BNSS, to call for the entire records pertaining to dismissal order in Crl.MP.No. 1 of 2025 in STC No.699 of 2022, dated 13.03.2025, on the file of the learned Judicial Magistrate Court, Sankarankovil, Tenkasi District and set aside the same and permit the petitioner to recall PW 1 for the purpose of cross examination, which is pending before the learned Judicial Magistrate Court, Sankarankovil, Tenkasi District.

For Petitioner

: Mr.P.Veerapandi

ORDER

This Criminal Original Petition is filed by the accused in STC No.699 of 2022, as against the order passed by the learned

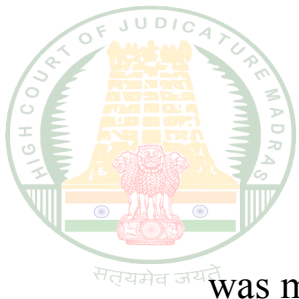


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Magistrate, in Crl.MP.No.1 of 2025 in STC No.699 of 2022, dated 13.03.2025, in and by which, the petitioner's application under Section 311 of Cr.P.C., to recall PW 1 for cross examination was rejected.

2.The petitioner is facing a proceedings under Section 138 of NI Act, before the learned Judicial Magistrate in STC No.699 of 2022 that the cheque given by this petitioner for a sum of Rs.5,00,000/- was returned as insufficient funds. PW 1/the complainant was examined in chief on 01.02.2023 by the trial Court and for the purpose cross examination, the case was adjourned for nearly 26 hearings in between 01.02.2023 and 03.10.2023. The petitioner has failed to cross examine PW 1 and therefore the prosecution evidence was closed. Thereafter, this petitioner had mentioned before the trial Court seeking time for settlement and the case was adjourned. However, he has filed a petition in Cr.MP No. 155 of 2024, under Section 311 of Cr.P.C, to recall PW1, for the purpose of cross examination on 12.02.2024 and the same was allowed by the trial Court, permitting the petitioner to cross examine PW 1. Accordingly, PW1 was cross examined in part on 25.11.2024 (after 13 hearings) after nine months. Further representation



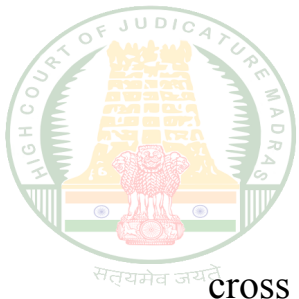
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was made for settlement and therefore the case was also referred to Lok Adalat. The trial Court has also provided 3 more hearings for him to complete the cross examination. But this petitioner has failed to cross examine PW1. Therefore, the trial Court, *suo motu* closed the cross examination of PW 1 on 22.01.2025. Thereafter, the present MP No.1 of 2025 is filed by this petitioner, under Section 311 Cr.P.C, to recall PW 1, for the purpose of completing the cross-examination.

3.Considering the manner, in which, this petitioner has protracted the proceedings and has not utilized the opportunities, which were provided to him for cross examination of PW 1, the trial Court, by its order dated, 13.03.2025 has dismissed the application of the petitioner, by following the ratio of the Honourable Supreme Court in Vinod Kumar vs. State of Punjab (Criminal Appeal. No.554 of 2012). Aggrieved over the same, this Criminal Original Petition is filed.

4.This Court is of the view that the trial Court has passed the order in accordance with law and also considering the conduct of the petitioner in not utilizing the opportunities provided to him for



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cross examination of PW 1. At the same time, considering the fact that PW 1 is the main witness in this case and even according to the trial Court, he was only cross examined in part, this Court is inclined to provide one more opportunity to the petitioner, however, on terms.

5. Accordingly, the impugned order passed by the learned Judicial Magistrate Court, Sankarankovil, Tenkasi in Crl.MP.No.1 of 2025 in STC No.699 of 2022, dated 13.03.2025, is set aside. The petitioner shall deposit a sum of Rs.25,000/- to the credit of STC No. 699 of 2022, before the Judicial Magistrate Court, Sankarankovil, Tenkasi, within a period of two weeks from the date of receipt of a copy of this order. In the event, if this petitioner deposits a sum of Rs.25,000/- along with a fresh application under Section 311 Cr.P.C, the trial Court, after consulting with the petitioner's counsel and PW 1 shall fix a specific date for cross examination of PW 1 and on that date, the petitioner has to complete the cross examination of PW 1 at any cost. It is made clear that no further opportunity would be provided to the petitioner.



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6. With the above directions, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

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NCC : Yes/No
Index : Yes/No
Internet: Yes
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To

The Judicial Magistrate Court, Sankaran Kovil, Tenkasi.



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B.PUGALENDHI,J

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Order made in
Crl.OP(MD)No.9620 of 2025 and
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