

Crl.O.P.(MD)No.9843 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 12.06.2025

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THE HON'BLE MR.JUSTICE B.PUGALENDHI

Crl.O.P.(MD)No.9843 of 2025

and

Crl.M.P.(MD)No.7268 of 2025

C.Sathish Kumar

... Petitioner

versus

S.Muthukumar

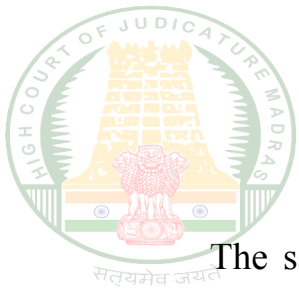
... Respondent

Prayer : Petition filed under Section 528 of BNSS, to set aside the order passed in Crl.M.P.No.6945 of 2023 in C.C.No.325 of 2021 dated 27.05.2025 on the file of the Judicial Magistrate/Fast Track Court, Srivilliputhur, within the time frame by this Court.

For Petitioner : Mr.T.Thirumurugan

ORDER

The petitioner had filed a petition before the learned Judicial Magistrate, Fast Track Court, Srivilliputtur, in Crl.M.P.No.6945 of 2023 in C.C.No.325 of 2021, seeking to recall D.W.1 for cross examination.



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The said petition was allowed by the learned Judicial Magistrate, Fast Track Court, Srivilliputtur, by order dated 21.05.2025, on condition that the petitioner shall pay a sum of Rs.1,000/- to the respondent by 26.05.2025. But, the petitioner failed to pay the said amount on 26.05.2025. Therefore, the trial Court dismissed the said petition on 27.05.2025 that the condition has not been complied with by the petitioner. Aggrieved over same, the petitioner has filed this Criminal Original Petition.

2. The learned counsel appearing for the petitioner submits that the petitioner's counsel was not present on 26.05.2025 since one of his colleague died and therefore, there was no proper representation for the petitioner. Further, the petitioner was not advised about the conditional order. Now, the petitioner is prepared to pay a sum of Rs.5,000/- for recalling D.W.1.

3. Heard the learned counsel appearing for the petitioner.



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4. The petitioner is the complainant in the proceedings initiated under Section 138 of the Negotiable Instruments Act. D.W.1 is the accused. The accused himself entered into the box and also deposed as D.W.1 on 06.09.2022. However, he was not cross examined on that day. According to the learned counsel for the petitioner, though the case was adjourned to several times after 06.09.2022, the accused has not appeared and therefore, the petitioner could not cross examine the accused/D.W.1. Therefore, the petitioner has filed an application to recall D.W.1 and the same was allowed on certain condition.

5. Considering the nature of relief sought for in the main petition and the undertaking given by the petitioner that he would cross examine D.W.1 on the next date of hearing and he is ready to pay a sum of Rs.5,000/- to D.W.1, this Criminal Original Petition is allowed on condition that the petitioner has to pay a sum of Rs.5,000/- (Rupees five thousand) to D.W.1.

6. The petitioner shall file a fresh application before the trial Court to recall D.W.1 for cross examination. On filing of such application, the



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trial Court shall permit the petitioner to cross examine D.W.1 by fixing a date. The petitioner shall pay a sum of Rs.5,000/- to D.W.1 and cross examine D.W.1 on the date fixed by the trial Court without fail. Consequently, connected miscellaneous petition is closed.

12.06.2025

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

1. The Judicial Magistrate/Fast Track Court,
Srivilliputhur.



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B.PUGALENDHI, J.

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