



CrI.O.P.(MD)No.11705 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 10.07.2025

CORAM :

THE HON'BLE MR.JUSTICE B.PUGALENDHI

CrI.O.P.(MD)No.11705 of 2025
and CrI.M.P.(MD)No.8887 of 2025

Thirumurugan

... Petitioner

Vs.

Kathirvel

... Respondent

Prayer : Criminal Original Petition filed under Section 528 BNSS, to set aside the return docket order dated 04.07.2025 in unnumbered CMP.SR.No.3240 of 2025 passed by the learned Judicial Magistrate No.I, Dindigul and issue direction to the learned Judicial Magistrate No.I, Dindigul to number the petition filed by the petitioner and take on file and consequently proceed with the petition in accordance with law within the stipulated time.

For Petitioner

: Mr.K.Sathish Kumar

ORDER

The petitioner, who is the accused in C.C.No.388 of 2022 on the file of the learned Judicial Magistrate No.I, Dindigul, has filed this petition seeking a direction to the learned Magistrate to number his



petition, which was filed for recalling P.W.1 for cross examination.

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2.The respondent herein has filed a complaint as against the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act. P.W.1 was examined in chief on 11.08.2023. However, the petitioner failed to cross examine P.W.1. Thereafter, evidence on prosecution was closed. Then, the petitioner has filed an application to recall P.W.1, on 04.06.2025 in Cr.M.P.No.6 of 2025 and the same was allowed on 11.06.2025 by the trial Court and the petitioner was also provided with an opportunity to cross examine P.W.1, on 23.06.2025. However, the petitioner failed to utilize the second opportunity, which has been provided to him. Therefore, the evidence was closed on 23.06.2025. Again, on 04.07.2025, the petitioner filed an application to recall P.W.1 for cross examination and the same was rejected by the trial Court by referring the earlier order passed in Cr.M.P.No.6 of 2025 dated 11.06.2025. Challenging the same, the petitioner filed the present petition.

3.The learned counsel appearing for the petitioner submits that the petitioner is having a good case. However, due to inconvenience of his



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counsel, he could not cross examine the witness. He also claims that cheque amount is Rs.15,00,000/- and the complaint has been falsely foisted as against him.

4.Though the learned counsel claims that the petitioner is having a good case before the trial Court, the petitioner has not availed the opportunity provided to him to cross examine P.W.1 from 11.08.2024 to 04.06.2025. The petitioner got another opportunity to cross examine P.W.1, in pursuant to the orders of the trial Court in Cr.M.P.No.6 of 2025 dated 11.06.2025. Though P.W.1 was present on 11.06.2025, the petitioner has not cross examined him on the ground that his counsel has to come from Ottanchathiram and he is not well. Since the petitioner failed to cross examine P.W.1 twice, the trial Court, under the impression that the petitioner is dragging the proceedings, has rejected the application.

5.The petitioner is facing proceedings for the offence under Section 138 of the Negotiable Instruments Act. In the event if the petitioner is not in a position to cross examine P.W.1, he may lose his case before the trial Court. Therefore, this Court is inclined to grant



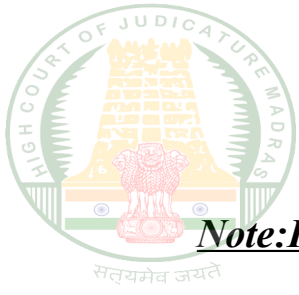
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permission to the petitioner to recall P.W.1 with specific undertaking that he would cross examine P.W.1 on the specific date, which the trial Court is fixing.

6.Considering the attitude of the petitioner that he failed to utilize the opportunities to cross examine P.W.1, this Court is inclined to allow this petition by imposing certain costs. Accordingly, the order impugned dated 04.07.2025 is set aside and **this criminal original petition is allowed.** The petitioner is permitted to file a petition under Section 311 Cr.P.C., to recall P.W.1 along with cost of Rs.1,00,000/-(Rupees One Lakh only) payable to the respondent / defacto complainant. In the event, if any such application is filed, the trial Court shall entertain the same and shall fix a specific date to cross examine P.W.1. If the petitioner fails to cross examine P.W.1 on that date, the trial Court shall proceed with the proceedings and conclude the same, within a period of two months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

10.07.2025

Index : Yes/No
Internet:Yes
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Note: Issue order copy on 10.07.2025

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To

The Judicial Magistrate No.I, Dindigul



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B.PUGALENDHI,J

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