

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24-07-2025

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THE HONOURABLE MR JUSTICE B.PUGALENDHI

CRL OP(MD) No. 12523 of 2025

AND

CRL MP(MD) NO. 9718 OF 2025, CRL OP(MD) NO. 12525 OF 2025

1. R. Sadham Hussain
S/o. Rahmathullah, Taj Textiles, Near
AJ Furnitures, Vellai Vinayagar Kovil
Street, Thuvarangurichi, Manapparai
Taluk, Trichy District.

Petitioner in both OPs

Vs

1. R. Kamal
S/o. Pitchai Rowther, Sekkipatti
Village, Melur Taluk, Madurai District.

Respondent in both OPs

PRAYER : Petitions filed under Section 528 of BNSS, to call for the records pertaining to the docket order in CrI.M.P.Nos. 1115 of 2025 and 1116 of 2025 dated 12.06.2025 passed by the Judicial Magistrate, Melur, Madurai and set aside the same as illegal.

For Petitioner(s): Mr.Mukesh S

COMMON ORDER

The petitioner is an accused in STC No.830 of 2022 on the file of the learned Judicial Magistrate, Melur and it was instituted for the offence under Section 138 of the Negotiable Instruments Act. PW1 was examined in chief on 3.11.2022 and he was cross examined on 11.01.2024. After the trial, when the

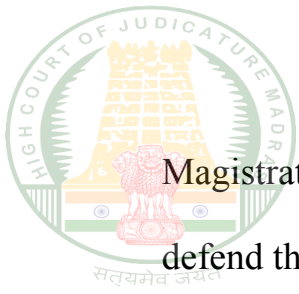


case was posted for arguments, the petitioner changed the counsel and filed an application to recall PW1 for the purpose of cross examination and an application to re-open the case. Both applications were dismissed by order dated 12.06.2025. Challenging the same the petitioner has filed these petitions.

2.The learned counsel for the petitioner submits that the respondent / complainant has also instituted proceedings against the petitioner in CC.No.91 of 2022 for the offence under Section 138 of the Negotiable Instruments Act, before the learned Judicial Magistrate, Singampunari. The very same complainant has filed a separate complaint as against the petitioner before the learned Judicial Magistrate, Melur. However, this fact has not been elicited during the cross examination by the earlier counsel. It is the defect on the part of the earlier counsel. The new counsel has noted this defect only at the time of arguments. Therefore, the petitioner filed an application to recall PW1 for cross examination and another application to re-open the case.

3.This court considered the submission of the learned counsel for the petitioner.

4.The application to recall the witnesses for cross examination cannot be used as a tool to fill-up lacuna. However, the petitioner is facing the proceedings under the Negotiable Instruments Act and it is reported that similar proceedings is pending between the respondent and the petitioner before the learned Judicial



Magistrate, Singampunari. This may be the vital point for the petitioner to defend the present case.

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5.It is reported that the case in STC No.830 of 2022 is at the stage of argument. Ordering notice to the 2nd respondent would certainly affect the progress of the case. Therefore, these petitions are disposed of at the stage of admission as follows:

i.The impugned orders are set aside on condition that the petitioner shall pay a sum of Rs.20,000/- (Rupees Twenty Thousand) to PW1 for recalling him for cross examination.

ii.The petitioner shall file fresh applications before the trial Court for recalling PW1 for cross examination.

iii.On such payment as directed above, the trial court shall fix the date for the cross-examination of PW1.

iv.The petitioner shall cross-examine PW1 on the date fixed by the trial court without fail and it is made clear that no more opportunity would be provided to the petitioner in this regard.

Consequently connected miscellaneous petition is closed.

24-07-2025

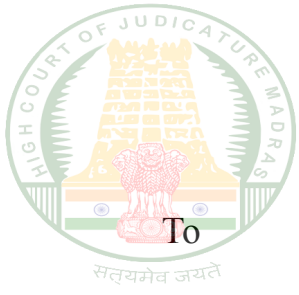
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WEB COPY 1. The Judicial Magistrate, Melur.

2.R. Kamal
S/o. Pitchai Rowther, Sekkipatti
Village, Melur Taluk, Madurai
District.



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B.PUGALENDHI J.

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CRL OP(MD) NO. 12525 OF 2025**

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