



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.03.2016

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

Crl.O.P.(MD) No.4183 of 2016 &
Crl.M.P.(MD).No.2100 of 2016

Balamurugan

... Petitioner

vs.

The Sub-Inspector of Police,
Theni Police Station,
Theni District.
(Cr.No.315 of 2008)

... Respondent

PRAYER: This petition is preferred under Section 482 Cr.P.C., to set aside the order passed by the learned Judicial Magistrate, Theni in Cr.M.P.No.1265 of 2015, dated 29.05.2015.

For Petitioner : Mr.A.K.Manickam

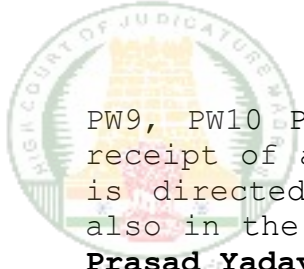
For Respondent : Mrs.S.Prabha, G.A.(Crl.Side)

O R D E R

It is seen that the incident in this case took place, on 04.04.2008 and the final report in this case was filed, in C.C.No.451 of 2008 before the learned Judicial Magistrate, Theni. The prosecution has examined, PW9 on 07.07.2011, PW10 on 05.06.2012, PW11 on 24.03.2013 and PW12 on 15.10.2014 on which date, the accused did not cross-examine the witnesses. Thereafter, the accused filed an application in Crl.M.P.No.1265 of 2015 in C.C.No.451 of 2008, under Section 311 Cr.P.C. to recall PW9, PW10, PW11, and PW12 and the same was dismissed on 29.05.2015. Challenging the said order, the accused is before this Court.

2. In **Vindo Kumar v. State of Punjab** reported in (2015) 3 SCC 220, the Hon'ble Supreme Court has held that if the witness is examined in chief, on the very same day, the witness should be cross-examined. The Hon'ble Supreme Court has directed the Hon'ble Chief Justice of all the High Courts in the country to circulate the order to all the Trial Courts to be followed strictly. In the said judgment, the chief examination of the witnesses was done on one day and cross-examination was done subsequently, in which the witnesses resiled. The Hon'ble Supreme Court relied upon the chief and convicted the accused on the ground that the witnesses have been won over. The same principle requires to be followed by the Trial court also, where a witness supports the prosecution case in chief, but when on his cross-examination on different date, if he resiles from his earlier version, it is open to the Trial Court to rely upon the Chief-examination and convict the accused.

3. In this case, it is not known whether PW9, PW10, PW11, and PW12 are available or not. However, liberty is given to the petitioner to file a fresh petition under Section 311 Cr.P.C. giving reasons for recalling



PW9, PW10 PW11 and PW12, within a period of two weeks from the date of receipt of a copy of this order and on such filing the learned Magistrate is directed to pass orders expeditiously, in accordance with law, and also in the light of the decision of the Hon'ble Supreme Court in **Rajaram Prasad Yadav v. State of Bihar & Anr** reported in **(2013) 14 SCC 461**.

4. The criminal original petition is disposed of with the above direction. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO Dept.)

/True copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate, Theni.
2. The Sub-Inspector of Police,
Theni Police Station,
Theni District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.A.K.MANICKAM, Advocate, SR No.13958

Cr1.O.P.(MD) No.4183 of 2016
10.03.2016

jikr

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