



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:30.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRL.O.P.(MD)No.11317 of 2017

and

CRL.M.P.(MD)No.7771 of 2017

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1. Babulal @ Jaffer
2. Ramakrishnan
3. Sahul Hameed
4. Mani @ Rajamani
5. Sasikumar

... Petitioners/Petitioners/
Accused Nos.1 to 4 & 6

-Vs-

The State through,
The Inspector of Police,
Pasupthipalayam Police Station,
Karur District.

(In Crime No.201 of 2011)

... Respondent/Complainant

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to set aside the order passed in C.M.P. No.3243 of 2017 in C.C.No.177 of 2012 on the file of the learned Judicial Magistrate No.I, Karur, dated 10.07.2017 and to recall the witness of P.W.1 for cross examination.

For Petitioners : Mr.C.Marimuthu

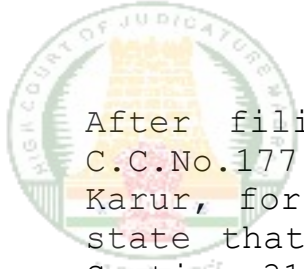
For Respondent : Mr.K.Anbarasan,
Government Advocate(Crl. Side).

O R D E R

This Criminal Original petition is filed to set aside the order passed in C.M.P.No.3243 of 2017 in C.C.No.177 of 2012 on the file of the learned Judicial Magistrate No.I, Karur, dated 10.07.2017 and to recall the witness of P.W.1 for cross examination.

2. Heard the learned counsel appearing for the petitioners and the learned Government Advocate(Criminal side) appearing for the respondent.

3. It is the case of the petitioners that the petitioners are the accused Nos.1 to 4 and 6 originally in Crime No.201 of 2011.



After filing of Charge Sheet, the case was taken on file in C.C.No.177 of 2012 before the learned Judicial Magistrate No.I, Karur, for the offences under Section 379 I.P.C. The petitioners state that they filed a petition in C.M.P.No.3243 of 2017 under Section 311 Cr.P.C., to recall the witness P.W.1 for the purpose of cross examination. The said petition was dismissed on the ground that the petitioners' counsel did not avail, when the witness P.W.1 was examined on a particular date. Stating that the witness cannot be recalled for flimsy reason and it is the duty of the accused to cross examine the witness when the witness appears before the Court and that the petitioners were not entitled to maintain the petition under Section 311 Cr.P.C., the petition was dismissed. Pendency of the case for more than five years was also cited as a reason by the learned Judicial Magistrate No.I, Karur, for dismissing the petition.

4. The learned counsel for the petitioners relied upon the Judgment of the Hon'ble Supreme Court in the case of **Godrej Pacific Tech. Ltd., V. Computer Joint India Ltd.**, reported in **(2008) 11 SCC 108**, wherein, it has been held as follows:-

"27.The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case."

5. Further, the learned counsel for the petitioners relied upon the Judgment of the Hon'ble Supreme Court, in the case of **Natasha Singh V. CBI**, reported in **(2013) 5 SCC 741**, wherein, the Hon'ble Supreme Court has held as follows:-

"8. Section 311 Cr.P.C., empowers the Court to summon a material witness, or to examine a person present at "any stage" of "any enquiry", or "trial", or "any other proceedings" under Cr.P.C., or to summon any person as a witness, or to recall and re-examine any person who has already been examined if his evidence appears to it, to be essential to the arrival of a just decision of the case. Undoubtedly, Cr.P.C., has conferred a very wide discretionary power upon the Court in this respect, but such a discretion is to be exercised judiciously and not arbitrarily."

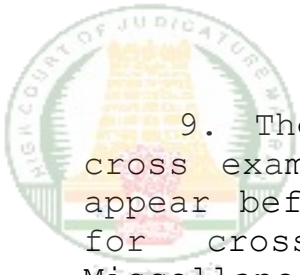


The power of the Court in this context is very wide, and in exercise of the same, it may summon any person as a witness at any stage of the trial, or other proceedings. The Court is competent to exercise such power even suo motu if no such application has been filed by either of the parties. However, the Court must satisfy itself, that it was in fact essential to examine such a witness, or to recall him for further examination in order to arrive at a just decision of the case."

6. The learned counsel for the petitioners also relied upon the Judgment in the case of **Prithvi Singh V. Randhir Singh**, reported in **(2008) 17 SCC 654**, wherein, the Hon'ble Supreme Court has held that the learned Magistrate has wide powers regarding the examination of material witnesses during the course of trial at any stage. Only criteria for exercising of this power was stated to be that the Court should be satisfied that the evidence is essential to the just decision of the case.

7. Yet another Judgment of Hon'ble Supreme Court is relied upon by the learned counsel for the petitioners, in the case of **Rajaram Prasad Yadav V. State of Bihar**, reported in **2013 CRI.L.J.3777**, wherein, the Hon'ble Supreme Court has considered the scope and object of Section 311 Cr.P.C. It was held that the Court should always be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. It was directed that the Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results. Since the Hon'ble Supreme Court in several cases has reiterated the grant of fairest opportunity to the accused to prove his innocence, giving sufficient opportunity to cross examine the witness will always serve the purpose in rendering justice.

8. In view of the law laid down by the Hon'ble Supreme Court in several Judgments, refusing to give an opportunity to cross examine the witnesses during the trial will cause serious prejudice to the accused and in that view of the matter, the Criminal Original petition is allowed and the order passed by the learned Judicial Magistrate No.1, Karur, in C.M.P.No.3243 of 2017 in C.C.No.177 of 2012, dated 10.07.2017, is set aside and the petition stands allowed.



9. The petitioner is directed to avail the opportunity by cross examining the witness P.W.1 on the date when the witness appear before the Court, without seeking any further adjournment for cross examining the witness. Consequently, connected Miscellaneous petition is closed.

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Sd/-

Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.I,
Karur.
2. -Do- Thro Chief Judicial Magistrate
Karur.
3. The Inspector of Police,
Pasupthipalayam Police Station,
Karur District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.C.Marimuthu, Advocate Sr.No.75484

PMU

VB/SV/MMS/SAR1/13/09/2017/4P/6C

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