



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.10.2019

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P. (MD) .No.5812 of 2019

and

Crl.M.P. (MD) No.3722 of 2019

Chinna Durai

... Petitioner/ 2nd Accused

Vs.

The State Rep.by
The Inspector of Police
Tirunelveli Taluk Police Station,
Tirunelveli District.
(Cr.No.153/2017)

... Respondent

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to set aside the order passed dated 29.03.2019 in Cr.M.P.No.2855 of 2019 in S.C.No.620 of 2017 on the file of the IV Additional District & Sessions Judge, Tirunelveli District.

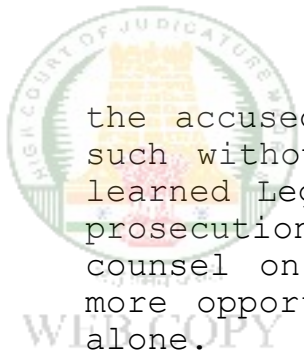
For Petitioner : Mr.K.Rajeswaran

For Respondent : Mr.K.Suyambulinga Bharathi
Government Advocate (crl.side)

O R D E R

This petition has been filed challenging the order dated 29.03.2019 in Cr.M.P.No.2855 of 2019 in S.C.No.620 of 2017 on the file of the learned IV Additional District & Sessions Judge, Tirunelveli District, thereby, dismissing the application filed by the petitioner under Section 311 of the Code of Criminal Procedure to recall the prosecution witnesses P.Ws.1 to 18.

2.The learned counsel for that petitioner would submit the after registering the case, the petitioner and another accused were arrested and remanded in judicial custody till today, they are incarceration imprisonment. In the mean while, the respondent filed a final report and the same was taken cognizance in S.C.No.620 of 2017 for the major offence under Section 302 I.P.C. On behalf of



the accused, the trial Court appointed a Legal Aid Counsel and as such without getting any proper instruction from the accused, the learned Legal Aid Counsel on behalf of the petitioner examined the prosecution witness. Now, the petitioner managed to engage another counsel on record to defend him. Therefore, he may be given one more opportunity to cross-examine the witnesses P.W.1 to 3 and 18 alone.

3.The learned Government Advocate (criminal side) would submit that there are totally two accused, in which, the petitioner is arrayed as A2, the petitioner is a habitual offender in similar in nature and he is incarceration imprisonment. Now, the trial almost completed, the entire prosecution witnesses were examined and question of 313 is also over and the matter is posted for arguments. At this stage, if the prosecution witness is recalled, the entire proceedings will be stalled and the petition is only to protract the proceedings. Therefore, he prayed for dismissal of this petition.

4.Heard the learned counsel for the petitioner and the learned Government Advocate (criminal side) for the respondent.

5.There are totally two accused in this case and the petitioner is arrayed as A2. Admittedly, they were arrested in Crime No.153 of 2017 and incarceration imprisonment. Thereafter, legal aid counsel appointed by the trial Court and the prosecution witnesses examined P.W.1 to 18. Now, the questioning is also over and the matter is posted for arguments. Now, the petitioner engaged new counsel and also restricted to cross-examine the prosecution witness P.W.1 to 3 and 18 alone. Since the petitioner did not instruct properly to the legal aid counsel in the trial Court, he wants to engage a new counsel and cross-examine the prosecution witnesses P.W1 to 3 and 18 alone.

6.Considering the above facts and circumstances, the petitioner may be given one more opportunity to cross-examine P.W.1 to 3 and 18 alone on payment of necessary charges. Therefore, the order dated 29.03.2019 in Cr.M.P.No.2855 of 2019 in S.C.No.620 of 2017 on the file of the IV Additional District & Sessions Judge, Tirunelveli District is set aside in so far as the witnesses P.W.1 to 3 and 18 are concerned and the petitioner is permitted to cross examine P.W.1 to 3 and 18 on the date fixed by the trial Court and on the next hearing date by payment of necessary charges. If the petitioner failed to cross-examine P.W.1 to 3 and 18, the trial Court is directed to proceed with trial in accordance with law. The entire process shall be completed within a period of four weeks from the date of receipt of a copy of this order. Further, it is made clear that if any threatening by the accused to the witnesses, the respondent is directed to take stringent action as against the petitioner/accused in the manner known to law.



7. With the above directions, this Criminal Original Petition is partly allowed. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (Recrods)

// True Copy //

Sub Assistant Registrar

To

1. The IV Additional District & Sessions Judge,
Tirunelveli District,
2. The Inspector of Police
Tirunelveli Taluk Police Station,
Tirunelveli District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.RAJESHWARAN, Advocate (SR-91520[F] dated 04/10/2019

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