

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2020

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

Crl.O.P.Nos.19888 & 19904 of 2020
and

Crl.M.P.Nos.8164 & 8171 of 2020

Crl.O.P.No.19888 of 2020

1. Kandan

S/o, Raju,
D.No.2/30, Annanagar,
Majarakollapatty Salem District.

2. Kanagaraj,

S/o, Raju,
D.No.2/30, Annanagar,
Majarakollappatty Salem District.

...Petitioners

-Vs-

The State of Tamilnadu,
Represented by
The Inspector of Police,
Magudanchavadi Police Station,
Salem District.

... Respondent

Prayer in Crl.O.P.No.19888 of 2020: Criminal Original
Petition filed under section 482 of Criminal Procedure Code, to
call for the records relating to the order dated 5-11-2020 made
in CMP No.201 of 2020 in SC No.166 of 2017 on the file of the
III Additional District Judge, Salem set aside the same and
allow the CMP.

Crl.O.P.No.19904 of 2020

1. S.Sadhasivam,
S/o, Somanathan,
Mannathagoundanur,
Edanganasalai,
Salem District.

2. S.Gokulraja,
S/o, Sadasivam,
Mannathagoundanur,
Edanganasalai,
Salem District.

3. S.Mohanraj,
S/o, Sadasivam,
Mannathagoundanur,
Edanganasalai,
Salem District.

4. Vennila,
W/o, Sadasivam,
D.No.7/72, Mannathagoundanur,
Edanganasalai,
Salem District.Petitioners

-Vs-

The State of Tamilnadu,
Represented by
The Inspector of Police,
Magudanchavadi Police Station,
Salem District. Respondent

Prayer in CrI.O.P.No.19904 of 2020: Criminal Original
Petition filed under section 482 of Criminal Procedure Code, to
call for the records relating to the order dated 5-11-2020 made
in CMP No.200 of 2020 in SC No.166 of 2017 on the file of the
III Additional District Judge, Salem set aside the same and
allow the CMP.

For Petitioners : Mr.M.Devaraj
For Respondent : Ms.M.Prabhavathi
Additional Public Prosecutor

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COMMON ORDER

Assailing the order dated 05.11.2020 passed in Cr.M.P
Nos.200 and 201 of 2020 in SC No.166 of 2017 on the file of the
III Additional District Judge, Salem, the Criminal Original
Petitions have been laid by the accused.

2. The Cr.M.P.Nos.200 and 201 of 2020 have been preferred by the respective accused seeking to recall the P.Ws.1 to 8 for the purpose of cross examination.

3. Briefly stated, according to the accused, when P.Ws.1 to 8 were examined, due to the lack of relevant medical records pertaining to the injury inflicted on the body of the accused in the alleged incident and as the prosecution had suppressed the complaint lodged by the accused against the deceased and their family, it is necessary on the part of the accused to unearth all the relevant records and the same took a reasonable time and their petitions to defer the cross examination of P.Ws.4 to 8 had been dismissed and inasmuch as the records had been collected by the accused and they are ready to cross examine the witnesses namely P.Ws.1 to 8, according to them, an opportunity should be provided to cross examine the abovesaid witnesses and hence the petitions.

4. The prosecution resisted the abovesaid petitions preferred by the accused contending that P.W.1 had already been cross examined by the accused in common and the petition preferred by the accused to defer the cross examination of P.Ws.2 to 4 had been dismissed on the same day by the Court. Further the petition preferred by them to defer the cross examination of P.Ws.7 and 8 were also dismissed by the Court on the same day and infact P.Ws.1 to 3 had already been cross examined by the accused and though the Court had granted sufficient opportunity to the accused to examine the P.Ws.4 to 8, they had endeavoured to examine the said witnesses after the lapse of more than eight months with a view to drag on the proceedings endlessly and furthermore, the occurrence having been taken place in the year 2015 and the complaint given by A1 against P.Ws.1 to 6 in Crime No.635/2015 having been referred as mistake of fact, despite the above position, the accused had not endeavored to collect the documents in advance and examine the witnesses adduced by the prosecution and in fact, the accused had also cross examined P.Ws.9 to 11 and the case has reached the final stage and hence only to delay the proceedings endlessly, the present petitions have come to be laid by the accused and the petitions are devoid of merits and liable to be dismissed.

5. On an appreciation of the materials placed on record and after hearing the rival contentions putforth by the respective parties, the Court below was pleased to dismiss the petitions preferred by the accused to recall P.Ws.1 to 8. Impugning the same, the present Criminal Original Petitions have been laid.

6. On a perusal of the placed records and the impugned order passed by the Court below, it is noted that the accused had been charged under sections 147, 294(b), 302, 342, 302 r/w 109, 326 and 324 IPC and the prosecution had already examined P.Ws.1 to 13. It is also further noted that P.Ws.1 to 3 had already been cross examined in detail by the accused. The accused had not endeavored to cross examine P.Ws.4 to 6 when they were examined on 17.12.2019, furthermore, their petitions to defer their cross examination having not been entertained by the Court below and despite further opportunity provided to them to cross examine the abovesaid witnesses, the accused had not availed the same. Similarly, the accused had not endeavoured to cross examine P.Ws.7 and 8 when they were examined by the prosecution and their petitions to defer their cross examination had been dismissed by the Court. Subsequent thereto, P.Ws.9 to 12 were examined by the prosecution and P.Ws.9,11 and 13 had already been cross examined by the accused A1 to A3 and not cross examined by A4 and A5. Noting the abovesaid factors, the Court below had held that despite a fair opportunity having been provided to the accused to cross examine the prosecution witnesses 4 to 8, they had not endeavoured to cross examine them on the date when they were examined and their contention that due to the non availability of certain records pertaining to the alleged incident, they were unable to cross examine the prosecution witnesses 1 to 8, as such, been disbelieved by the Court below. It is noted that the alleged occurrence took place on 01.12.2015. The trial had commenced in the year 2017 itself. Despite the same, the contention of the accused that they were unable to secure the material records pertaining to the occurrence and hence they were unable to cross examine the prosecution witnesses in detail as such cannot be readily countenanced and therefore, the Court below is found to be justified in disbelieving the abovesaid reason placed by the accused as devoid of merits. Furthermore, the contention of the accused that due to the pandemic situation they were unable to file the applications immediately also has been rightly disbelieved by the Court below. When it is noted that the prosecution witnesses had been examined much prior to 05.02.2020, the reason projected by the accused that due to the pandemic situation they were unable to file the petitions immediately to recall the prosecution witnesses is of no avail and not entitled to be accepted.

7. In the light of the abovesaid factors, considering the decision of the Apex Court reported in 2015(3) SCC 220 [Vinoth Kumar Vs. State of Punjab], the trial court has rightly held that the accused had not adduced valid and convincing reason for recalling the prosecution witnesses and on the other hand, their intention is only to prolong the proceedings endlessly one way or the other and the abovesaid object of the accused cannot at

all be countenanced in any manner. Hence, the Court below is found to be justified in dismissing the petitions preferred by the accused for recalling P.Ws.1 to 8 for cross examination.

8. In the light of the abovesaid reasons, I do not find any error or infirmity in the impugned order passed by the Court below. Resultantly, the Criminal Original Petitions are dismissed. Consequently, connected miscellaneous petitions are also closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To

1.The III Additional District Court,
Salem

2. The Inspector of Police,
Magudanchavadi Police Station,
Salem District.

3.The Public Prosecutor,
High Court, Madras.

+2 ccs to M/s.M.Devaraj Advocate sr41157,41158

CrI.O.P.Nos.19888 & 19904 of 2020
and
CrI.M.P.Nos.8164 & 8171 of 2020

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