



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.02.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**

Crl.O.P.[MD].No.3306 of 2020  
and  
Crl.M.P.(MD)No.1733 of 2020

P.Jeyapaul : Petitioner / Petitioner / Accused

Vs.

- 1.The Inspector of Police,  
Kurumbur Police Station,  
Thoothukudi District. : 1<sup>st</sup> Respondent / 1<sup>st</sup> Respondent /  
Complainant
- 2.M.Muthupandi : 2<sup>nd</sup> Respondent / 2<sup>nd</sup> Respondent /  
De-facto Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C. to set aside the order passed in Crl.M.P.No.416 of 2020, dated 10.02.2020 in S.C.No.64 of 2017, on the file of the I Additional District and Session Judge, Thoothukudi.

For Petitioner : Mr.S.M.Mohan Gandhi

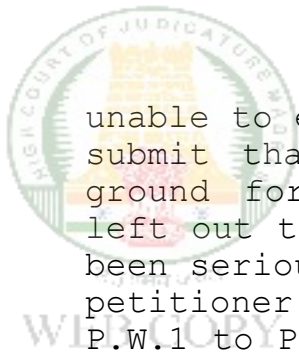
For R-1 : Mr.S.Chandarasekar  
Additional Public Prosecutor

For R-2 : Mr.Ka.Ramakrishnan

**ORDER**

The Criminal Original Petition has been filed seeking to set aside the order passed in Crl.M.P.No.416 of 2020, dated 10.02.2020 in S.C.No.64 of 2017, on the file of the I Additional District and Session Judge, Thoothukudi, dismissing the petition filed under Section 311 of Cr.P.C to recall the witnesses P.W.1 to P.W.4.

2.The learned counsel appearing for the petitioner would submit that the petitioner is a sole accused facing trial in S.C.No.64 of 2017, for the offences punishable under Sections 241, 294(b), 302 and 506(ii) of IPC. He would further submit that P.W.1 to P.W.9 were examined on 27.06.2019. Since the petitioner had not properly instructed the counsel who appeared before the trial court, he was



unable to effectively cross examine P.W.1 to P.W.4. He would further submit that though the incompetence of the Advocate cannot be a ground for recalling witnesses, certain important questions were left out to be put to the witnesses and thereby, the petitioner has been seriously prejudiced by the ineffective cross examination. The petitioner had filed a petition seeking to recall the witnesses P.W.1 to P.W.4. However, the learned Trial Judge had dismissed the same. Therefore, the petitioner has come before this Court seeking to recall the witnesses P.W.1 to P.W.4 on imposition of costs and terms. He would further submit that the petitioner is prepared to do further cross examine the witnesses on the same day of their appearance before the trial Court and that the petitioner is also prepared to abide by any directions issued by this Court.

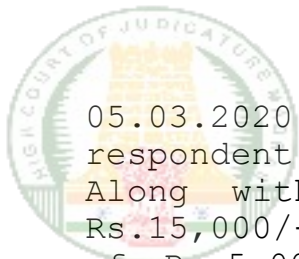
3.The learned Additional Public Prosecutor would submit that due notice was given and date was fixed for trial and the witnesses were examined in chief and cross examined on the same day on 27.06.2019. However, he would fairly submit that a detailed cross examination has not been done by the counsel for the accused.

4.The learned counsel appearing for the second respondent/de-facto complainant would vehemently oppose stating that the Hon'ble Apex Court had repeatedly held that recall of witnesses should be for only a *bonafide* reason and recall cannot be allowed on a plea that the defence counsel was not competent and that the witnesses were not effectively cross-examined and recall is not a matter of course and discretion given to the Court has to be exercised judicially to prevent failure of justice and not properly. He would further submit that the witnesses were earlier threatened by the accused.

5.I gone through the order passed by the learned Trial Judge.

6.The learned Trial Judge finding that no valid reasons has been stated by the petitioner seeking to recall the witnesses has, dismissed the petition. I do not find any infirmity in the order passed by the learned Trial Judge. However, perusal of the deposition shows that the witnesses have not been effectively cross-examined. The petitioner/accused cannot be allowed to suffer for the incompetence of the Advocate. This Court is of the opinion that one more opportunity can be given to the petitioner in the interest of fair trial. This Court enquired the learned Additional Public Prosecutor whether the respondent police will be able to produce the witnesses before the Court on the next hearing date. The learned Additional Public Prosecutor, on instructions from the respondent police, submitted that the respondent police will be able to produce the witnesses P.W.1 to P.W.4 on 09.03.2020.

7.In view of the same, Crl.M.P.No.416 of 2020, dated 10.02.2020 in S.C.No.64 of 2017, passed by the learned I Additional District and Session Judge, Thoothukudi, is set aside. The petitioner is directed to file a memo before the trial Court on or before



05.03.2020 and the learned Trial Judge shall issue notice to the respondent for production of witnesses P.W.1 to P.W.4 on 09.03.2020. Along with the memo, the petitioner shall deposit a sum of Rs.15,000/- (Rupees Fifteen Thousand only). Out of which, an amount of Rs.5,000/- (Rupees Five Thousand only) shall be paid to the District Legal Aid Services Authority attached to the concerned court. Out of the balance amount of Rs.10,000/- (Rupees Ten Thousand Only), the trial Judge shall disburse the amount of Rs.2,500/- (Rupees Two Thousand and Five Hundred only) each to the witnesses on the date of their appearance before the trial Court. It is made clear that the petitioner shall complete further cross examination of the witnesses on the same day of their appearance. In the event, if they are not further cross examined on 09.03.2020, the petitioner shall lose the chance of cross examining in the witnesses. Since a representation was made that the witnesses were threatened, the respondent shall ensure the safety of the witnesses. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

- 1.The I Additional District and Session Judge, Thoothukudi.
- 2.The Inspector of Police,  
Kurumbur Police Station, Thoothukudi District.
- 3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.

Copy to:

The Officer / Incharge,  
District Legal Aid Service Authority,  
Thoothukudi.

+1 CC to M/s.S.M.MOHAN GANTHI, Advocate ( SR-8349[F]

Crl.O.P.[MD].No.3306 of 2020  
25.02.2020

sj i

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