



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :14.09.2020

CORAM:

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

CRL OP(MD)No.9579 of 2020

M.Selvam : Petitioner/Petitioner/Accused

Vs.

State Rep.by
The Sub-Inspector of Police,
Traffic Investigation Wing,
No.III, Madurai
Cr.No.90 of 2014

: Respondent/Respondent/Complainant

PRAYER: Petition filed under Section 482 of Criminal Procedure Code, to set aside the order passed by the learned Judicial Magistrate No.5, Madurai, dated 23.07.2020 in Cr.M.P.No.473 of 2020 in C.C.No.24 of 2015.

For Petitioner : Mr.M.Sarangan
For Respondent : Mr.S.Chandrasekar
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed seeking the relief to set aside the order passed by the learned Judicial Magistrate No.V, Madurai, dated 23.07.2020 in Cr.M.P.No.473 of 2020 in C.C.No.24 of 2015.

2. The case of the prosecution before the trial Court is that the petitioner is an accused in C.C.No.24 of 2015, on the file of the learned Judicial Magistrate No.V, Madurai. In the said case, there was an allegation as against the petitioner that on 23.04.2014, at about 15.30 hrs., in Madurai Sammattipuram Main Road, when he had driven the two wheeler viz.,Bajaj XCD, bearing Registration No.TN-84-5767, in a rash and negligent manner, dashed against one another two wheeler, bearing Registration No.TN-58-L-9659 in which, the deceased travelled.

3. Upon the said accident, the deceased sustained multiple injuries and resultantly, he died and therefore, a case case been registered against the petitioner, for the offence punishable under



Sections 279 and 304(A) IPC. Subsequent to the completion of investigation, the respondent police has filed the final report against the petitioner and the same was taken on file in C.C.No.24 of 2015.

4. During the course of trial proceedings, when at the time, P.W.1, P.W.2, P.W.4 to P.W.7, P.W.10, P.W.11 and P.W.14 were examined, the petitioner has not chosen to complete the cross-examination. Ultimately, when the case was posted for examination of Investigating Officer in the year of 2020, the petitioner filed an application before the learned Judicial Magistrate No.V, Madurai, in Cr.M.P.No.473 of 2020, under Section 311 Cr.P.C., in which, he prayed to recall the above referred witnesses, for the purpose of cross-examination.

5. When the application filed by the petitioner came up for enquiry, the learned Judicial Magistrate No.V, Madurai, by observing that it is the duty vested upon the petitioner to complete the cross-examination on the same day, when the chief examination was recorded in the Court and therefore, the petition filed by the petitioner deserves to be dismissed.

6. In this regard, the learned counsel appearing for the petitioner would submit that in earlier, when at the time of recording the chief examination, the counsel appearing for the petitioner before the trial Court was engaged in some other Court and therefore, the cross-examination of the witnesses could not be completed. In fact, such submission made by the counsel appearing for the petitioner is violative of the Judgment rendered by our Hon'ble Apex Court. The time and again, the Hon'ble Apex Court held that the pleader engaged in another Court shall not be a ground for adjournment and thereby, before the trial Court, without mentioning the adequate reasons, the petitioner filed the application.

7. In this regard, this Court has held that the order passed by the learned Judicial Magistrate is not having any infirmity. However, considering the fact that the petitioner was charged for the offence under Section 304(A) IPC., if the Judgment is pronounced without giving an opportunity to the petitioner for cross-examining the witnesses, the same may cause prejudice over the right having by the petitioner. At this juncture, it is relevant to see the Judgment of our Hon'ble Apex Court in **Rajendra Prasad Vs. Narcotic Cell** reported in **(AIR 1999 SC 2292)** wherein, it has been held as follows:-

"A lacuna in prosecution is not to be equated with the fallout of an oversight committed by a public prosecutor during trial, either in producing relevant materials or in eliciting relevant answers from witnesses. The adage 'to err is human' is the recognition of the

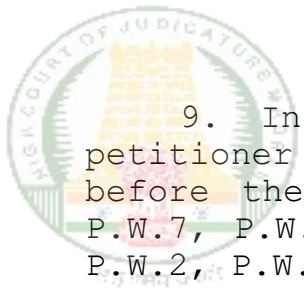


possibility of making mistakes to which humans are proved. A corollary of any such latches or mistakes during the conducting Of a case cannot be understood as the lacuna which a court cannot fill up.

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Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trail of the case, but an over sight in the management of the prosecution cannot be treated as irreparable lacuna. No parry in a trial can before-closed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal Court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better."

8. Therefore, applying the principles set out by our Hon'ble Apex Court, it is made clear that the accused has a right to cross-examine the witnesses to elicit the suppressed facts and to expose the discrepancies. The object of cross-examination is to impeach the credibility and the general value of the evidence given by the witnesses. The right to cross-examination is one of the valuable rights of the accused in order to elicit the truth from the witnesses. Though the accused has no right to seek postponement of the cross-examination and the cross-examination should follow the Examination-in-Chief, but in certain cases, where either the counsel for the accused is not available on account of some unforeseen reason or the defence counsel is not prepared with cross-examining the witnesses when the Examination-in-Chief is over, then in such case, the trial Court, in its discretion, may permit the cross-examination of any such witness to be deferred until any witness is examined or re-called for cross-examination. The object of cross-examination is to enable the Court to arrive at the truth, irrespective of the fact whether the prosecution or the defence has examined the witnesses or failed to produce some evidence or due to unavoidable circumstances, the accused failed to cross-examine the witnesses. The evidence is taken neither to help the prosecution nor for the defence but the same is taken for a just and proper disposal of the case. In these circumstances, in order to impart justice, and to arrive at a just and proper disposal of the case, I think it proper to allow the petitioner to cross-examine the witnesses.



9. In this regard, the learned counsel appearing for the petitioner would submit that though the petition has been filed before the trial Court for recalling the P.W.1, P.W.2, P.W.4 to P.W.7, P.W.10, P.W.11 and P.W.14, it would suffice to recall P.W.1, P.W.2, P.W.10 and P.W.14 alone.

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10. Therefore, considering the facts and circumstances of the case, this Criminal Original Petition is allowed and the order passed by the learned Judicial Magistrate No.V, Madurai, dated 23.07.2020 in Cr.M.P.No.473 of 2020 in C.C.No.24 of 2015 is set aside. The learned Judicial Magistrate is directed to issue summons to P.W.1, P.W.2, P.W.10 and P.W.14 for their appearance to a particular single day and upon such appearance of the said witnesses, the petitioner is directed to complete the cross-examination on the same day itself.

11. However, since the petition mentioned Calender case is pending from the year of 2015, it would appropriate to impose some costs to the petitioner. Accordingly, the petitioner shall pay a sum of Rs.10,000/- (Rupees Ten Thousand Only), to the Additional Registrar General i/c [The Registrar (Judicial), Madurai Bench of Madras High Court, for the improvement of amenities of this Court, within a period of one month from the date of receipt of a copy of this order and directed to file a memo before the trial Court in respect to the payment of costs.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MPK

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Judicial Magistrate No.V,
Madurai.
2. The Sub-Inspector of Police,
Traffic Investigation Wing,
No.III, Madurai



3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to: The Additional Registrar General(i/c),
The Registrar (Judicial),
Madurai Bench of Madras High Court,
Madurai.

**CRL OP(MD)No.9579 of 2020
14.09.2020**

SCR(CO)
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