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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.18098 of 2021

Sangili

...Petitioner

Vs.

State by
The Inspector of Police
Perambalur Police Station,
Perambalur.
(Cr.No. 766/2015)

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records and set aside the order dated 13.09.2021 made in Crl.M.P.No.2353/2021 in C.C.No.67/2016 (on the file of the Judicial Magistrate-I, Perambalur).

For Petitioner : Mr.A.Nizar Ahamad.

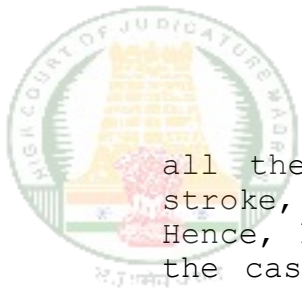
For Respondents : Mr.A.Damodharan,
Addl.Public Prosecutor

ORDER

This Criminal Original Petition has been filed to call for the records in Crl.M.P.No.2353/2021 in C.C.No.67/2016 on the file of the Judicial Magistrate-I, Perambalur and set aside same.

2. The petitioner, who is an accused in C.C.No.67 of 2016 pending on the file of the Judicial Magistrate-I, Perambalur, had filed a petition in Crl.M.P.No.2353 of 2021 to recall PW1 to PW9 under Section 311 Cr.P.C and the same was dismissed by the Trial Court on 13.09.2021. Against which, the present petition.

3. The contention of the petitioner is that the case is of the year 2016 and it is kept pending without any progress for the past 4 years. Without notice whatsoever, on 12.03.2020,



all the witnesses i.e. PW1 to PW9 have been examined in one stroke, and petitioner/accused was not aware about the same. Hence, his counsel was unable to cross examine the witnesses of the case. A mention was made to the trial court to defer the cross examination to the next hearing date, but the same was not considered and it was recorded that the petitioner was not interested in cross examining the witnesses. Thereafter, due to pandemic situation, the Courts had been closed and the normal functioning of the courts commenced, recently. Hence, immediately, the petitioner had filed a petition to recall the witnesses PW1 to PW9.

4. The learned counsel for the petitioner would submit that it is a road accident and all the witnesses have given a parrot version. Further their evidence is highly doubtful and hence, the petitioner have to cross examine the witnesses with regard to the manner of accident, negligence as well as the presence of the witnesses. In view of the same, the cross examination of the witnesses is necessary to arrive at a justification of the case.

5. The learned Additional Public Prosecutor would submit that in this case, PW1 to PW9 was examined on 12.03.2020. All the witnesses are from Madurai and with great difficulty, the respondent police had produced the witnesses and sufficient time was given to the petitioner and his counsel to cross examine them. Despite the same, they failed to cross examine the witnesses. Recording the same, the Trial court had rightly dismissed the petition filed under Section 311Cr.P.C. Now, recalling the witnesses would amount to causing harassment to the witnesses.

6. Considering the submissions and on perusal of the materials, it is seen that PW1 to PW9 were examined on 12.03.2020, i.e. 4 years after the filing of charge sheet in this case. Hence, the petitioner and his counsel were not prepared due to the long delay in producing the witnesses. Further only on cross examination of the witnesses, the veracity of the witnesses can be tested. In view of the same, this court is inclined to allow the petition.

7. Accordingly, this Criminal Original Petition is allowed and the order dated 13.09.2021 passed in CrI.M.P.No.2353 of 2021 is set aside and the petitioner is permitted to recall PW 1 to PW9 and cross examine them on condition that the petitioner shall pay a cost of Rs.750/- (Rupees Seven Hundred and



Fifty only) each on the date of the appearance of the witnesses.
Further the petitioner to cross examine the witnesses on the
same day without any further delay.

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Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mrp/mdl

To

1. The Judicial Magistrate-I,
Perambalur.
2. The Inspector of Police
Perambalur Police Station,
Perambalur.
3. The Public Prosecutor,
High Court, Madras.

CRL.O.P.No.18098 of 2021

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NSK 20/10/2021