



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No. 21256 of 2021 and
CMP.No.11518 of 2021

Chinnavan@Govindarajan

...Petitioner

Versus

State by
Inspector of Police
Ethapur Police Station
Salem District.
Crime No.380/2016

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed by the III Additional District Judge, Salem in Cr.M.P.No.376 of 2021 in S.C.No.72 of 2017 dated 13.09.2021 and allowed the petition filed under Section 311 of Cr.P.C by Petitioner/Accused 1 and Recall the above said witness viz., P.W.1 to P.W.9 Selvi, Bharathi, Periyasamy, Gunasekaran, Kandasamy and Dr.Rajalakshmi barring P.W.4 (Vijayalakshmi), P.W.6 (Aravindan) and P.W.8 (Kannan).

For Petitioner : Mr.S.Jayakumar
For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

O R D E R

This petition has been filed to set aside the order passed by the III Additional District Judge, Salem in Cr.M.P.No.376 of 2021 in S.C.No.72 of 2017 dated 13.09.2021.

2. The Petitioner who is the first accused in S.C.No.72 of 2017 had filed a petition under Section 311 of Cr.P.C. before the Lower Court in CrI.M.P.No.376 of 2021 seeking to recall P.W.1 to P.W.9. The Lower Court by an order dated 13.09.2021 dismissed the same.

3. The contention of the learned counsel appearing for the Petitioner is that the petitioner is facing trial along with his son who is the second accused and both of them are now in judicial confinement and they are being produced for trial. He



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further submitted that the Lower Court dismissed the petition filed by the petitioner on the main ground that a direction has been given by this Court in Crl.O.P.No.73 of 2021 to complete the trial, on a day-to-day basis within a period of four months. He further submitted that the Lower Court failed to consider the fact that the petitioner is facing capital punishment and the evidence will be completed only on cross examination of the witness and testing the same.

4. It is his further contention that veracity of the evidence can be assessed, by way of cross examination, which would be beneficial to arrive at a fair decision, further it is a fundamental right of the petitioner which cannot be denied.

5. The learned Additional Public Prosecutor fairly submitted that witnesses sought by the Petitioner to recall, were not cross examined earlier and the petitioner is now in confinement.

6. Heard the learned counsel for the petitioner and the learned Public Prosecutor appearing on behalf of the respondent.

7. Considering the submissions made on either side, admittedly the petitioner is facing trial with respect to capital punishment and the witnesses sought by the petitioner to recall, are not cross examined. Hence, this Court is of the view that the petitioner would be greatly prejudiced if the evidence is not tested by cross examination.

8. The learned counsel appearing for the Petitioner submitted that he is practicing at Chennai and conducting Trial to this case is at Salem, hence he prays that he will complete the trial when the witnesses are present, without asking adjournment giving any reason, shall cross examine the witness and when they appear.

9. Considering the overall facts and circumstances of the case, this Court is inclined to set aside the order passed by the Lower Court dated 13.09.2021.

10. Accordingly, the order dated 13.09.2021 made in Crl.M.P.No.376 of 2021 is set aside and the witnesses sought by the petitioner viz.. P.W.1, to P.W.3, P.W.5, P.W.7 and P.W.9 are hereby recalled and they shall be cross examined on 29.11.2021, 06.12.2021 and 13.12.2021 (three consecutive Mondays) and the same shall be completed on 13.12.2021.



Accordingly, this Criminal Original Petition is allowed.
Consequently, connected Miscellaneous Petition is closed.

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s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

arr
To

1.The III Additional District Judge
Salem

2. The Inspector of Police,
Ethapur Police Station,
Salem District.
Crime No.380/2016

3. The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.S.Jayakumar, Advocate sr 59720

CRL.O.P.No. 21256 of 2021

RP(CO)
SP(24/11/2021)