



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.06.2021

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGOVAN

CrI.O.P. (MD) No.5655 of 2021

(Through Video Conference)

- 1) Mithra
2) Kamaraj
3) Sivalingam
4) Muthupandi
5) Mohan

... Petitioners /
Revision Petitioners

Vs.

State rep. through
The Sub Inspector of Police,
E3, Anna Nagar Police Station,
Law and Order, Madurai.
Crime No.339 of 2012

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records and to set aside the order passed by the VI Additional Sessions Judge, Madurai in Cr.R.P.No.22 of 2021 dated 19.03.2021 by allowing the Criminal Original Petition and to proceed further in accordance with law.

For Petitioner	: M/s.A.Banumathy
For Respondents	: Mr.R.M.Anbunithi, Additional Public Prosecutor (CrI.side)

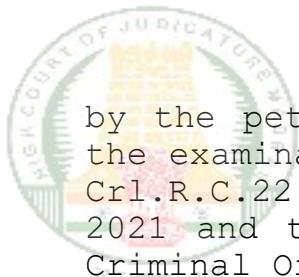
O R D E R

This Criminal Original Petition is filed to set aside the dismissal order passed in Cr.R.P.No.22 of 2021, dated 19.03.2021.

2. A case has been registered in Crime No.339 of 2012 on the file of the respondent police against the petitioners. In the above case, prosecution witnesses were examined on several dates. Since the counsel engaged by the petitioners misplaced the bundle, the petitioners did not procure necessary documentary evidence to enable the counsel for cross examination.

3. Heard both sides.

4. The learned counsel for the petitioners was not in a position to cross-examine the witnesses. So, the petitioners filed a petition in Cr.M.P.No.427 of 2021 before the Judicial Magistrate No.6, Madurai under Section 311 Cr.P.C to re-call the witnesses for cross-examination. That petition came to be dismissed on 25.01.2021, mainly on the ground that the opportunity was not properly utilized



by the petitioners and cross-examination cannot be deferred beyond the examination of the other witnesses. Later, the petitioners filed CrI.R.C.22 of 2021 to set aside the order passed in Cr.M.P.No.427 of 2021 and the same was dismissed on 19.03.2021. Hence, the present Criminal Original Petition has been filed.

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5. The learned counsel for the petitioner at the time of arguments would submit that only due to the inability on the part of the learned counsel for the petitioners, they were not in a position to cross-examine the witnesses, on the date of chief examination and apart from that, there is no lethargic attitude on the part of the learned counsel for the petitioners. When such a plea is taken, it is the duty of this Court to see that a fair trial requires due participation of the accused and the prosecution and the inability, on the part of the counsel for the petitioners to get proper instruction cannot be a ground for non-cross-examination.

6. The purpose of cross-examination has been clearly enunciated by the Hon'ble Supreme Court in **Kartar Singh Vs State of Punjab** reported in **(1994) 3 SCC 569**. So, the points, which have been raised by the Hon'ble Supreme Court is extracted hereunder:-

"Section 137 of the Evidence Act defines what cross-examination means and Sections 139 and 145 speak of the mode of cross-examination with reference to the documents as well as oral evidence. It is the jurisprudence of law that cross-examination is an acid-test of the truthfulness of the statement made by a witness on oath in examination-in-chief, the objects of which are:

(1) to destroy or weaken the evidentiary value of the witness of his adversary;

(2) to elicit facts in favour of the cross-examining lawyer's client from the mouth of the witness of the adversary party;

(3) to show that the witness is unworthy of belief by impeaching the credit of the said witness:

and the questions to be addressed in the course of cross-examination are to test his veracity; to discover who he is and what is his position in life; and to shake his credit by injuring his character."

7. So, this position is also been pressed in the case of **Jayendra Vishnu Thakur Vs.State of Maharashtra** reported in **(2009) 7 SCC 104** in the following words:-

"A right to cross-examine a witness, a part from being a natural right is a statutory right. Section 137 of the Evidence Act provides for examination-in-chief, cross-examination and re-examination. Section 138 of the Evidence Act confers a right on the adverse party to cross-examine a witness who had been



examined in chief, subject of course to expression of his desire to the said effect. But, indisputably such an opportunity is to be granted. An accused has not only a valuable right to represent himself, he has also the right to be informed threabout. If an exception is to be carved out, the statute must say so expressly or the same must be capable of being inferred by necessary implication. There are statutes like the Extradition Act, 1962 which excludes taking of evidence vis-a-vis opinion."

In the facts and circumstances of the case, I am of the considered view that the petitioners must be given one more opportunity, to cross-examine the witnesses.

8. So, I am of the considered view that one more opportunity may be given to the petitioners to cross-examine the witnesses. The petition is liable to be allowed and the order passed by the VI Additional Sessions Judge, Madurai in Cr.R.P.No.22 of 2021 dated 19.03.2021, is set aside with the following conditions:-

(i) The petitioners must deposit Rs.2,000/- (Rupees Two Thousand Only) as cost to each of the prosecution witness, namely **(*)P.W.1,P.W.2 and P.W.5**, before the Trial Court within 15 days from the date of receipt of a copy of this order;

(ii) The Trial Court may fix a date for cross examination of the witnesses and shall send summons to the witnesses; and

(iii) On the date fixed, the petitioners must cross examine the witnesses without fail. If any failure is noticed, then the right of cross examination of the witnesses will be lost.

9. With the above direction, this Criminal Original Petition is disposed of. In the meantime, it is also submitted that the learned Additional Public Prosecutor (Crl.Side) that the matter is listed for pronouncement of orders on 05.07.2021. Therefore, there shall be an order of interim stay till then.

Sd/-

Assistant Registrar (CS III)

(*)Amended as per order of this Court dated 12/07/2021 made in CRL OP(MD) .No.5655/2021

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



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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 be substituted the order already despatched on 01.07.2021

To:

- 1.The VI Additional Sessions Judge,
Madurai.
2. The Sub Inspector of Police,
E3, Anna Nagar Police Station,
Law and Order,Madurai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD)No.5655 of 2021

Dated:
30.06.2021

KK(01.07.2021) 4P 4C

KK(CO)

KB(14.07.2021) 4P 4C