



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.09.2021

CORAM

**THE HONOURABLE MR.JUSTICE G.ILANGOVAN**

Crl.O.P. (MD) .No.13178 of 2021

and Crl.M.P. (MD).No.6786 of 2021

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1.Rameshkumar  
2.Selvi  
3.Suganya

... Petitioners/Accused Nos.1 to 3

**Vs.**

State rep. by the  
Sub Inspector of Police,  
All Women Police Station,  
Thiruvaiyaru, Thanjavur District.

... Respondent/Complainant

**PRAYER:** Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records made in C.M.P.No.544 of 2021 in C.C.No.111 of 2015 on the file of the Judicial Magistrate, Thiruvaiyaru, Thanjavur District, dated 10.05.2021 and set aside the same.

For Petitioner : Mr.S.Deenadhayalan  
For Respondent : Mr.R.Meenakshi Sundaram  
Additional Public Prosecutor

**ORDER**

(This writ petition is heard through video conference)

This criminal original petition has been filed to set aside the order passed in C.M.P.No.544 of 2021 in C.C.No.111 of 2015 by the learned Judicial Magistrate, Thiruvaiyaru, Thanjavur District, dated 10.05.2021.

2.The petitioner has filed a petition under Section 311 Cr.P.C. to recall P.Ws.1, 2 and 4 for cross examination and the same has been dismissed by the trial Court with an observation that sufficient opportunity was given to the petitioner. But he was lethargic in utilising the same and after a lapse of 2 ½ years, come forward with this petition. The delay as well as non utilizing of the opportunity without any proper reason are found to be the reasons for rejecting the petition. It appears that it is a matrimonial dispute between the husband and wife and a case has been registered for the offence punishable under Section 498 A. Since it is an offence under Section 498A, which may be result in serious consequences, one more opportunity may be given to the petitioner to cross examine the witnesses.



3.The purpose for the cross-examination has been more fully described and discussed in **Kartar Singh Vs State of Punjab** reported in **(1994) 3 SCC 569**. The points, which have been raised by the Hon'ble Supreme Court, are 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."*

4.So, I am of the considered view that if the case is allowed to proceed without cross-examination of P.Ws.1, 2 and 4, then it cannot be termed as a fair trial. Unchallenged evidence may lead to miscarriage of justice. So, on that sole ground, I am of the considered view that the petition is liable to be allowed with the following stringent conditions.

1) The petitioner must deposit a sum of Rs.2,000/- (Rupees Two Thousand only) as cost to each of the witnesses to the credit of C.C.No.111 of 2015 before the trial Court, within a period of 15 days from the date of receipt of a copy of this order.

2) On such deposit, the trial Court is directed to recall the witnesses P.Ws.1, 2 and 4 for cross examination by fixing a particular date. On that date, the petitioner must cross examine the witnesses without fail. If any failure is noticed, then the further right to cross examine the witnesses will be forfeited.



5. With the above directions this criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

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// True Copy //

/ /2021

Sub Assistant Registrar(CS)

*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,  
Thiruvaiyaru,  
Thanjavur District.

2. Sub Inspector of Police,  
All Women Police Station,  
Thiruvaiyaru, Thanjavur District.

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

+1 CC to M/s.S.DEENADHAYALAN, Advocate ( SR-29631[F] dated 20/09/2021 )

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17.09.2021**

**RS (29.09.2021) 3P 5C**