



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.ILANGOVAN

Crl.O.P. (MD)No.11471 of 2019

Gopal @ Gopalakrishnan
S/o.Veeranan

... Petitioner/Petitioner/Accused

Vs.

The Sub Inspector of Police,
All Women Police Station,
Usilampatti,
Madurai District.
(Crime No.36/2013)

...Respondent/Respondent/Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records and set aside the order of dismissal dated 01.03.2019 passed in petition filed under Section 311 of Cr.P.C by the Sessions Judge, Mahalir Neethimandram, Madurai made in Crl.M.P.No.289 of 2019 in S.C.No.59 of 2014 and allow this Criminal Original Petition.

For Petitioner	: Mr.V.Santhakumaresan
For Respondent	: Mr.R.Sivakumar
	Government Advocate(Crl.Side)

O R D E R

This petition has been filed to call for the records and set aside the order of dismissal dated 01.03.2019 passed in petition filed under Section 311 of Cr.P.C by the Sessions Judge, Mahalir Neethimandram, Madurai made in Crl.M.P.No.289 of 2019 in S.C.No.59 of 2014 and allow this Criminal Original Petition.

2. The petitioner is facing trial before the Court below for the offence under Sections 417, 376 of IPC and Section 4 of TNPHW Act and witnesses were examined in chief on various dates. The petitioner did not cross-examine the witnesses of L.W.1, L.W.2 and L.W.4 to L.W.8 . So, re-call petition has been filed by him, which came to be dismissed by the the Sessions Judge, Mahalir Neethimandram, Madurai, dated 01.03.2019, observing that this Court in Crl.O.P(MD).No.10418 of 2014 to dispose of the case within a period of 6 months from the date of receipt of copy of this order and no proper reason was assigned for non cross examining the witnesses.

3.The learned counsel for the petitioner would submit that on the date of chief examination, the junior advocate appeared before the trial Court and he was not in a position to cross examine the witnesses.



4. Heard both sides.

5. The reason for the non-cross-examination of the witnesses on the date of chief examination, it appears that it is not properly explained by the petitioner. After a lapse of several years, this petition came to be filed and the reason given by the petitioner for the above said delay cannot be appreciated. But, the petitioner is facing the serious offence under Sections 417, 376 of IPC and Section 4 of TNPHW Act.

6. But, however, in the facts and circumstances of the case, I am of the considered view that one more opportunity shall be given to the petitioner to cross-examine the material witnesses.

7. 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."

8. 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

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."

9. So, in the light of the above, I am of the considered view that an opportunity is given to the petitioner. So, this petition is liable to be allowed and the order passed by the learned Sessions Judge, Mahalir Neethimandram, Madurai, in Crl.M.P.No.289 of 2019 in S.T.C.No.59 of 2014, dated 01.03.2019, is quashed with the following conditions:-

(i) The petitioner must deposit Rs.1,500/- (Rupees one Thousand Five Hundred Only) as cost to the each witness before the Trial Court within 15 days from the date of receipt of a copy of this order.

(ii) On deposit being made, the Trial Court may re-call the witnesses by fixing the two consecutive days for cross examination and shall send summons to the witnesses.

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

10. With the above direction, this Criminal Original Petition is allowed. Considering the oldness of the Crime, the Trial Court is directed to dispose of the case in S.C.No.59 of 2014 within a period of five months from the date of cross examination of the witnesses. After disposal of the case on merits, compliance report must be submitted to the Registry.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2022

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

- 1.The Sub Inspector of Police,
All Women Police Station,
Usilampatti,
Madurai District.
- 2.The Sessions Judge, Mahalir Neethimandram,
Madurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

COPY TO:

The Registrar (Judicial),
Madurai Bench of Madras High Court, Madurai.

Crl.O.P. (MD)No.11471 of 2019

26.11.2021

SS (CO)

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