



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.12.2021

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P (MD)No.19698 of 2021

Ponnuthurai

... Petitioner/Petitioner/Accused
Vs.

State through
The Inspector of Police,
Aykudi Police Station,
Tenkasi District.
(Crime No.106 of 2016)

... Respondent/Respondent/Complainant

Prayer: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records pertaining to the order dated 30.11.2021 in Cr.M.P.No.504 of 2021 in S.C.No.483 of 2016 on the file of the Additional District and Sessions Judge (FTC), Tenkasi and set aside the same.

For Petitioner : Mr.K.Prabhu

For Respondent : Mr.E.Antony Sahaya Prabahar,
Addl. Public Prosecutor.

O R D E R

Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondent.

2.The petitioner is facing trial in S.C.No.483 of 2016 of the file of learned Additional District and Sessions Judge (FTC), Tenkasi, for the offence under Section 302 of IPC. On 29.10.2021, P.W.13 to P.W.17 were examined in chief. However, on the said date, those witnesses were not cross examined. Before the next hearing date ie., 30.11.2021, on 17.11.2021 itself, a petition under Section 311 of CrPC was filed for recall of the said witnesses. The said petition was dismissed by the Court below vide order dated 30.11.2021. Challenging the same, this criminal original petition has been filed.

3.The learned counsel for the petitioner submitted that the learned senior counsel, who has been engaged to defend the petitioner had engagement in a part heard matter before this Court on 29.10.2021. The extract of the cause list has also been enclosed in the typed set of papers.

4.The learned Additional Public Prosecutor appearing for the respondent submitted that the impugned order does not call for any interference.

<https://hcservices.ecourts.gov.in/hcservices/>



5.I carefully considered the rival contentions and went through the materials on record. It is true that the learned senior counsel engaged by the learned counsel for the petitioner for conducting his trial had engagements before this Court also on 29.10.2021. However, the witnesses, who were examined in chief on the said date were government doctors. Such witnesses cannot be made to come again and again before the trial Court for giving their testimony. Though the reason given by the learned counsel for the petitioner does not appeal to me and though I find the reasons assigned by the Court below to be quite justifiable, since the petitioner is facing trial for the offence under Section 302 of IPC, in the interest of justice and to give one more opportunity, the order impugned in this criminal original petition may have to be partly interfered with. The learned counsel for the petitioner made it clear that eventhough he had sought recall of five witnesses, he would confine his request to P.W.13 and P.W.17 alone. Taking into account the said submission, the impugned order is modified and recall of P.W.13 and P.W.17 alone is permitted. The Court below shall fix a date that is mutually convenient to the Court as well as the said witnesses and intimate the same to the petitioner's counsel well in advance. The petitioner's counsel gives an undertaking before this Court that on the said date when P.W.13 and P.W.17 are produced, they would be cross examined on the same day and under no circumstance, the cross examination will spillover to any other date. If the doctors are posted far away, their cross examination can be done even through video conferencing. The taxi charges of the witnesses will be borne by the petitioner apart from usual batta and process fees.

6.Recording the said submission, the order impugned in this criminal original petition is modified and this criminal original petition is partly allowed.

SD

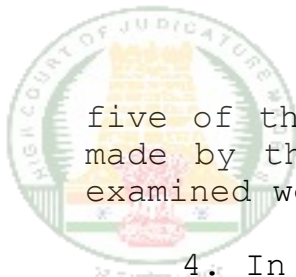
13.12.2021

This Criminal Original Petition having been posted under the caption for Being Mentioned on this 12th day of April Two Thousand and Twenty Two in the presence of Mr.K.Prabhu, Advocate for the Petitioner, and Mr.James Albert, Government Advocate for the Respondent, and pursuant to the order passed on 13.12.2021, this Court made the following order:-

The case is posted under the caption 'for being mentioned'.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (crl.side) appearing for the respondent.

3.The petitioner had filed the said petition challenging the order dismissing a petition for recall of five witnesses. All the



five of them are Government doctors. A submission was made by the State that the doctors who were proposed to be cross-examined were working at far off places.

4. In view of the said submission made by the State, I directed the petitioner's counsel to restrict his request. Based on the court direction, the petitioner's counsel restricted the request to P.W.13 & P.W.17 alone. Now, it turns out that the other three doctors are working only at Tenkasi / Tirunelveli. Since this aspect of the matter was not brought to my notice, in the interest of justice, the earlier order is recalled and the Registry is directed to issue the following revised order:-

"Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondent.

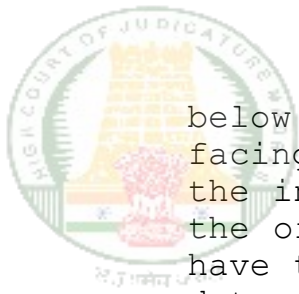
2.The petitioner is facing trial in S.C.No.483 of 2016 of the file of learned Additional District and Sessions Judge (FTC), Tenkasi, for the offence under Section 302 of IPC. On 29.10.2021, P.W.13 to P.W.17 were examined in chief. However, on the said date, those witnesses were not cross examined. Before the next hearing date ie., 30.11.2021, on 17.11.2021 itself, a petition under Section 311 of CrPC was filed for recall of the said witnesses. The said petition was dismissed by the Court below vide order dated 30.11.2021. Challenging the same, this criminal original petition has been filed.

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5.I carefully considered the rival contentions and went through the materials on record. It is true that the learned senior counsel engaged by the learned counsel for the petitioner for conducting his trial had engagements before this Court also on 29.10.2021. However, the witnesses, who were examined in chief on the said date were government doctors. Such witnesses cannot be made to come again and again before the trial Court for giving their testimony. Though the reason given by the learned counsel for the petitioner does not appeal to

<https://hcservices.eports.gov.in/hcservices/> though I find the reasons assigned by the Court



below to be quite justifiable, since the petitioner is facing trial for the offence under Section 302 of IPC, in the interest of justice and to give one more opportunity, the order impugned in this criminal original petition may have to be interfered with. The Court below shall fix a date that is mutually convenient to the Court as well as the said witnesses and intimate the same to the petitioner's counsel well in advance. The petitioner's counsel gives an undertaking before this Court that on the said date when P.W.13 to P.W.17 are produced, they would be cross examined on the same day and under no circumstance, the cross examination will spillover to any other date. If the doctors are posted far away, their cross examination can be done even through video conferencing. The taxi charges of the witnesses will be borne by the petitioner apart from usual batta and process fees.

6.Recording the said submission, the order impugned in this criminal original petition is modified and this criminal original petition is partly allowed."

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

RMI

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:

(*)to be substituted to the order already despatched on 15.12.2021

1. The Additional District and Sessions Court (FTC),
Tenkasi.
2. The Inspector of Police,
Aykudi Police Station,
Tenkasi District.



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

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+1 CC to Mr.K.PRABHU, Advocate SR.No. 19698

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13.12.2021
& 12.04.2022

USK 15/12/2021 3P/4C

TR(13.04.2022) 5P 5C