



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.12.2021

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P(MD)No.19929 of 2021

Baskaran

... Petitioner/Sole Accused

Vs.

The Inspector of Police,
Palanchettipatti Police Station,
Theni District.
(In Crime No.406 of 2016)

... Respondent/Complainant

Prayer: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records of the impugned order dated 24.03.2021 passed in Cr.M.P.No.7000 of 2019 in C.C.No.46 of 2017 on the file of the learned Judicial Magistrate, Theni and set aside the same and to direct the Court concerned to permit further cross examination of PW1 to PW5 by recalling PW1 to PW5.

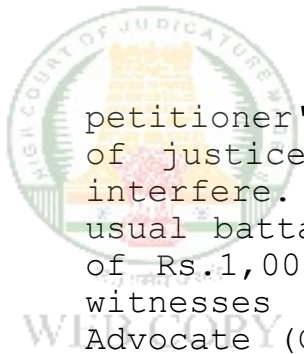
For Petitioner : Mr.J.Selvam
For Respondent : Mr.M.Sakthi Kumar,
Govt. Advocate (Crl. Side).

O R D E R

Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. Side) for the respondent.

2.The petitioner is facing trial in C.C.No.46 of 2017 on the file of the Judicial Magistrate, Theni. As many as five witnesses were examined on the side of the prosecution. The petitioner's counsel did not cross examine the said witnesses. Thereafter, Cr.M.P.No.7000 of 2019 was filed under Section 311 of CrPC for recall of the said witnesses. The Hon'ble Supreme Court has time and again held that recall petitions cannot be filed as a matter of course and that they will not be allowed as a matter of course. Witnesses cannot be vexed by repeatedly summoning them. If the petitioner's counsel had failed in his professional duty by not cross examining the witnesses on the same day, then the petitioner ought to take action against his counsel. In this case, no such complaint has been given by the petitioner.

3.Even though the trial Magistrate was justified in dismissing Cr.M.P.No.7000 of 2019, still considering the fact that the
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petitioner's defence will be irreparably prejudiced, in the interest of justice and to give one more opportunity, I am inclined to interfere. The petitioner's counsel states that apart from the usual batta and process fees for the witnesses, he would pay a sum of Rs.1,000/- per witness directly in the Court itself, when the witnesses turn up for giving evidence. The learned Government Advocate (Crl. Side) informs the Court the witnesses are very much present in the same locality and that they are very much available.

4.Recording the undertaking of the petitioner to pay costs, the order impugned in this criminal original petition is set aside and this criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// 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 Judicial Magistrate,
Theni, Theni District.
- 2.The Inspector of Police,
Palanchettipatti Police Station,
Theni District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P (MD) No.19929 of 2021
15.12.2021

RK(10/01/2021) 2P 4C