



WEB COPY



Crl.OP.No.381 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.381 of 2022

and

Crl.MP.No.120 of 2022

Thangaraj

... Petitioner

Vs.

State rep. by
Inspector of Police,
Kondaalampatti Police Station,
Salem District.
Cr.No.808 of 2013

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in Crl.MP.No.461 of 2021 in SC.No.340/2018 on the file of the III Additional District Judge, Salem and set aside the order of the III Additional District Judge, Salem dated 24.11.2021 in Crl.MP.No.461 of 2021 in SC.No.340/2018 and allow the criminal original petition.

For Petitioner : Mr.T.K.Ravikumar
For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor



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ORDER

This petition has been filed to set aside the order passed by the learned III Additional District Judge, Salem in CrI.MP.No.461 of 2021 in SC.No.340/2018 dated 24.11.2021, thereby, dismissing the petition filed under Section 311 of Cr.P.C.

2. The petitioner is arrayed as 5th accused in SC.No.340 of 2018 for the offences punishable under Sections 471 r/w 420 r/w 511 of IPC and under Sections 4, 5, 6 of Explosives Substance Act, 1908. After dismissal of discharge petition in Cr.MP.Nos.260 of 2019 and 638 of 2019, as on date no any orders from the Appellate Court in the appeal filed by the defence side against the above said order passed in the discharge petition u/s 227 of Cr.P.C. While so, new counsel entered appearance after the examination of PW1 to PW4 on 23.10.2021. At this juncture, the petitioner filed a petition to direct the respondent to produce the General Diary for the purpose of cross examining the witnesses.



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3. It is seen that already, the petitioner has cross-examined PWs.1 to 4 herein. Even before the cross examination of the witnesses, the petitioner filed a discharge petition in Cr.MP.Nos.260 of 2019 and 638 of 2019. Against which, no appeal has been preferred by the petitioner. Therefore, the Court below dismissed the petition on the ground that the purpose of requirements of general diary for the petitioner's side is not at all mentioned in the petition. The petition has been filed only to delay the process. The petitioner has also filed the petition under Section 311 of Cr.P.C seeking to recall PW.1 to PW4 for the purpose of further cross examination. Infact, PW1 to PW4 were already cross examined completely by the previous petitioner's counsel. Whenever a change of counsel enters his appearance, a petition for recall of witnesses who are already cross examined could not be permitted without any sufficient reasons, though the petitioner's side has stated that in order to ask certain material questions the above witnesses has to be recalled. Without stating any specific reasons for recalling of P.W.1 to P.W.4 they could not be permitted only because of change of counsel for the petitioner. Therefore,



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this Court finds no infirmity or illegality in the order passed by the Court below and this petition is liable to be dismissed.

4. Accordingly, this Criminal Original is dismissed. Consequently, the connected miscellaneous petition is closed.

15.09.2022

Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
Vv

To

1. The Additional District Judge-III,
Salem.
2. The Inspector of Police,
Kondaalampatti Police Station,
Salem District
3. The Public Prosecutor,
High Court, Madras.

G.K.ILANTHIRAIYAN, J.



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Vv

**Crl.O.P.No.381 of 2022
and
Crl.MP.No.120 of 2022**

15.09.2022