



WEB COPY

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2022

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.NO.10473 OF 2022

1. Salaparai Mani @ Mani,
S/o. Chinnasami
2. Sekar @ Gnanasundaram,
S/o. Kandan
3. Selva @ Selvakumar,
S/o. Kuppan
Thangavel (Died)
4. Ramakrishnan,
S/o. Ramasami

... Petitioners/Accused

Versus

State rep. by
Inspector of Police,
Yercaud Police Station,
Salem Dt.
(Crime No.53 of 2016)

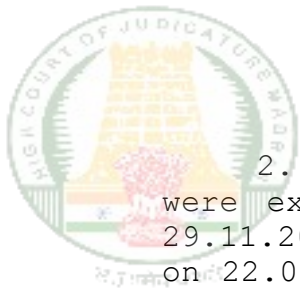
... Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the dismissal order in C.M.P.No.34 of 2020 in S.C.No. 30 of 2017 passed on 01.02.2020 by the I Addl. Assistant Sessions Judge, Salem.

For Petitioners	:	Mr.B.Vasudevan
For Respondent	:	Mr.A.Gokulakrishnan, Addl. Public Prosecutor

ORDER

The challenge is made against the order passed by learned I Addl. Asst. Sessions Judge, Salem dismissing the petition filed seeking for recalling the prosecution witnesses viz., P.Ws.1, 2, 4, 6, 7, 8, 11 and 12 for cross-examination.



2. The learned Judge taking note of the fact that P.W.1 to 3 were examined on 28.03.2018, P.W.4 and P.W.5 were examined on 29.11.2018, P.W.6 was examined on 31.01.2019, P.W.8 was examined on 22.08.2019, P.W.9 and P.W.10 were examined on 14.11.2019, and P.W.11 and P.W.12 were examined on 30.01.2020 in chief examination, and despite examination-in-chief, the petitioners/accused have not availed the opportunity of cross-examination. Taking note of the conduct and inadequacy in the process, the learned trial judge has dismissed the petition. The same was put into challenge before this Court.

3. The learned counsel appearing for petitioners would submit that fair opportunity to be given to cross-examine all the witnesses, since the offence alleged against the petitioners are grave in nature.

4. Heard the learned counsel appearing for petitioner and the learned Addl. Public Prosecutor appearing for respondent and perused the records.

5. At the outset, this Court is unable to countenance the submissions made by the learned counsel that fair opportunity was not given. It is relevant to note that as rightly noted by trial court, it has started examining witnesses from the year 2018 till 2020. Though the sessions trial to be conducted in a day-to-day basis, in fact, the trial court was also liberal in granting such adjournments and conducted trial in a peacemeal manner. Such a practice of conducting trial like magisterial trial is highly deprecated by this Court in many cases. Despite such orders, the cases are still kept by the trial court in the same manner, which is highly deprecated.

6. In such view of the matter, this Court is of the view that once the chief examination is over, the cross-examination has to be conducted on the same day. In the event of cross-examination could not be completed on the same day, it can be carried away to the next day and the matter cannot be protracted endlessly under the pretext of deferring cross-examination. Such postponements or adjournments or deferment of sessions trial is contrary to Sec.309 I.P.C. Therefore, the contention of learned counsel that fair opportunity was not given has no legs to stand. However, considering the fact that the accused was charged for the fair trial including Sec.395 r/w 397 I.P.C., and the witnesses are examined-in-chief and though the petition for recall was dismissed, still the matter is not disposed of. Taking into consideration the above fact, a final chance has been granted to the petitioner to cross-examine the witnesses viz., P.W.s 1,2,4,6,7,8,11 and 12 as requested by the learned counsel subject to payment of costs of Rs.25,000/- payable to



the Chief Justice Relief Fund within a week from the date of copy of this order. The receipt for payment of costs shall be produced before the trial court and on such production of receipt, the trial court shall examine the witnesses, particularly, P.Ws. 1,2,4,6,7,8,11 and 12 for the hearing dates on 4th and 5th July 2022. The cross-examination of the above witnesses shall be completed within a period of two days and no further adjournment need be given. It is also made it clear that due to passage of time, any contra evidence in the form of witnesses resiling from chief examination come on record in the form of cross-examination, the same shall be taken note of by the trial court in the light of judgment of Hon'ble Supreme Court reported in Vinod Kumar Vs. State of Punjab [2015 (1) MLJ (Crl.) 288 SC] and thereafter, dispose of the matter on merits within a period of three weeks. With the above direction, this Criminal Original Petition is disposed of.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rpp

To

1. The I Additional Assistant Sessions Judge,
Salem.
2. The Inspector of Police,
Yercaud Police Station,
Salem District.
3. The Public Prosecutor,
High Court, Madras.

Copy To

The Section Officer,
Accounts Section,
(Chief Justice Relief Fund),
High Court, Madras - 104.

+1cc to Mr.B.Vasudevan, Advocate, S.R.No.32619

CRL.O.P.No.10473 of 2022

GPL(CO)

RLP(15/06/2022)