



Crl.OP.No.24129 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.O.P.No.24129 of 2022
and Crl.M.P.Nos.15295, 15296 of 2022

1. Dhanasurya @ Sureshkumar
2. Masilamani

... Petitioners

Vs.

State represented by
The Inspector of Police,
Central Crime Branch,
Vepery, Chennai,
(Crime No.147 of 2007)

... Respondent

PRAYER: This Criminal Original Petition is filed under Section 482 of Cr.P.C., prayed, to set aside the order dated 26.02.2020 in Crl.M.P.No.6587 of 2019 in C.C.No.64 of 2011 on the file of the learned Judicial Magistrate No.I, Poonamallee and direct the trial Court to permit the petitioner to cross examine the PWs 1 to 9.

For Petitioners : Mr.A.M.Rahamath Ali

For Respondent : Mr.S.Santhosh
Government Advocate(Crl.side)



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ORDER

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This Criminal Original Petition has been filed to set aside the order dated 26.02.2020 in Crl.M.P.No.6587 of 2019 in C.C.No.64 of 2011 passed by the learned Judicial Magistrate No.I, Poonamallee.

2. The learned counsel for the petitioners would submit that the petitioners are arrayed as A1 and A2 in C.C.No.64 of 2011 and they were prosecuted by the respondent police for having committed offences punishable under Sections 406, 420, 465, 466, 468, 471, 120(b) of IPC. He would further submit that so far, the prosecution has examined P.W.1 to P.W.9 and due to some inconvenience, the P.W.1 to P.W.9 were not cross-examined by the petitioners counsel on the date of chief-examination. Therefore, the petitioner had filed a petition under Section 311 of Cr.P.C to recall the witnesses for cross-examination and the same was dismissed by the Trial Court. Hence, a fair opportunity has to be given to the petitioners in order to defend the prosecution case effectively.

3. The learned Government Advocate (Crl.side) for the respondent police



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would submit that in this case, 10 prosecution witnesses have been examined so far. He would further submit that the accused have not cross-examined any witnesses on the day of chief-examination. Thereafter, the petitioners had filed a petition under Section 311 of Cr.P.C to recall the witnesses and the same was dismissed. Aggrieved over the same, the present petition has been filed.

4. Heard the learned counsel for the petitioners and the learned Government Advocate (Crl.side) for the respondent police and perused the materials available on records.

5. On perusal of the records, it is seen that the petitioners are arrayed as A1 and A2 in C.C.No.64 of 2011 on the file of the learned Judicial Magistrate No.I, Poonamallee. They have been prosecuted by the respondent police for having committed offences punishable under Sections 406, 420, 465, 466, 468, 471, 120(b) of IPC. Admittedly, in this case, P.W.1 and P.W.2 have been examined on 22.01.2014, P.W.3 has been examined on 16.04.2014, P.W.4 and P.W.5 have been examined on 22.07.2014, P.W.6 has been examined on 23.07.2014, P.W.7 has been examined on 13.08.2019, P.W.8 and P.W.9 have been examined on



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18.09.2019 and all these witnesses were not cross-examined by the petitioners counsel due to their inconvenience. Since the petitioners have not assigned any valid reason in the petition for recalling the prosecution witnesses for cross examination, the learned Trial Court had dismissed the petition. In this regard, the Hon'ble Supreme Court of India repeatedly held that the cross-examination should be done on the same day of chief-examination. Admittedly, the reason assigned by the petitioners is not acceptable. But, at the same time, a fair chance has to be given to the petitioners to defend the prosecution case effectively. In this case, the petitioners are charged for serious offences. Speedy trial is the spirit of Article 21 of the Constitution. At the same time, the accused had right to cross examine the witnesses. A fair trial is also assured by the Constitution. In this circumstances, the Hon'ble Apex Court in the case of **Rajaram Prasad Yadav /vs/ State of Bihar and others** reported in **Crl.A.No.830 of 2013** laid down the principles to be followed while considering an application under Section 311 of Cr.P.C, which reads as follows:-

' (a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?



(b) The exercise of the widest discretionary power under Section 311 Cr.P.C should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.

(c) If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.

(d) The exercise of power under Section 311 Cr.P.C should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

(e) The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

(f) The wide discretionary power should be exercised judiciously and not arbitrarily.

(g) The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

(h) The object of Section 311 Cr.P.C simultaneously imposes a duty on the Court to



determine the truth and to render a just decision.

(i)The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.

(j)Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.

(k)The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

(l)The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

(m)The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that



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an opportunity of rebuttal is given to the other party.

(n)The power under Section 311 of Cr.P.C must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right [Rajaram Yadav v State of Bihar, AIR 2013 SC 3081 : 2013 Cr LJ 3777 (SC) : (2013) 14 SCC 461].'

In order to give an opportunity to the petitioners to defend the prosecution case effectively, this Court is inclined to allow this petition to cross-examine the P.W.1 to P.W.9.

6. Accordingly, this Criminal Original Petition stands allowed and the order passed by the learned Judicial Magistrate No.I, Poonamallee in Crl.M.P.No.6587 of 2019 in C.C.No.64 of 2011 is hereby set aside. However, the Trial Court is directed to recall P.W.1 to P.W.9 for cross-examination and the petitioners are hereby directed to cross-examine all the witnesses on the same day itself without any adjournment. Consequently, connected miscellaneous petitions are closed.



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Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order
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To

- 1.The Inspector of Police,
Central Crime Branch,
Vepery, Chennai,
- 2.The Public Prosecutor
High Court, Madras

V.SIVAGNANAM,J.

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