



WEB COPY



Crl.O.P.No.24965 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE **V.SIVAGNANAM**

Crl.O.P.No.24965 of 2022 and
Crl.M.P.No.15592 of 2022

Immanuvel

... Petitioner

Vs.

State rep. by The Inspector of Police,
Vaitheeswaran Kovil Police Station,
Vaitheeswaran Kovil,
Mayiladuthurai District.
(Crime No.562 of 2020)

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records relating to the proceedings of the order in CMP No.431 of 2022 in S.C.NO.67 of 2020 on the file of the Additional District Judge, Mayiladuthurai, Mayiladuthurai District and set aside the same.

For Petitioner : Mr.R.Muruga Bharathi

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



Crl.O.P.No.24965 of 2022

ORDER

WEB COPY This Criminal Original Petition has been filed challenging the order passed in CMP No.431 of 2022 in S.C.NO.67 of 2020 by the Additional District Judge, Mayiladuthurai District dated 18.08.2022.

2. The respondent police has prosecuted the case against the petitioner for the offences punishable under Sections 294(b), 302 IPC in Crime No.562/2020 and after filing final report, the case was taken on file as S.C.No.67 of 2020 on the file of the District Judge, Mayiladuthurai District and in this case, on the side of prosecution, PW1 to PW12 were examined. It is the contention of the petitioner that, since his previous counsel had not cross examined the PW3 to PW7, PW11 and PW12, he filed a petition in CMP No.431 of 2022 in S.C.No.67 of 2020 under Section 311 of Cr.P.C. to recall the above witnesses, however, it was dismissed by the Trial Judge. Hence to set aside the above order, this petition has been filed.

3. The learned counsel for the petitioner submitted that, the petitioner has changed his previous counsel and change of vakalath has also been filed.



He further submitted that, some important facts with regard to the occurrence has to be elucidated by cross examining the prosecution witnesses and hence, fair chance has to be given to the petitioner to made out the case against the petitioner and to establish their defence side.

4. The learned Government Advocate (Crl.Side) submitted that in S.C.No.67 of 2020, totally twelve witnesses have been examined and now the case is pending for further examination of prosecution witnesses.

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

6. Admittedly, the petitioner was charged for offence punishable under Sections 294(b) and 302 IPC by the prosecution and PW1 to PW12 were examined as prosecution witnesses. Subsequently, the petitioner has changed his counsel. However, it is the contention of the petitioner that the previous counsel has not cross examined the PW3 to PW7 and PW11 and PW12 and it is necessary to bring out certain crucial points through cross examination of



the above witnesses, to establish the defense case. The charge under Section 302 IPC is serious in nature and hence, the right of the accused to cross examine the prosecution witnesses cannot be denied. Though the Speedy Trial is the spirit of Article 21 of the Constitution, the accused had right to cross examine the witnesses and a fair trial is also assured by the Constitution.

7. At this juncture, it is worthwhile to note that, 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 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.



WEB COPY

(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.

WEB COPY

(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 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].'

Therefore, this Court is of the view that fair chance has to be given to the petitioner/accused to make out the prosecution case against him and to prove



Crl.O.P.No.24965 of 2022

his defence case.

WEB COPY

8. Accordingly, this criminal original petition is allowed and the order passed by the Trial Court in CMP No.431 of 2022 in SC No.67 of 2020 dated 18.08.2022 is set aside. Consequently, connected miscellaneous petition is closed. The petitioner is directed to pay “Day Costs” to the witnesses PW3 to PW7, PW11 and PW12 and cross examine them, without getting any adjournments. Further, the Trial Court is directed to dispose the case, within three months from the date of receipt of the copy of this order.

14.10.2022

Index: Yes/No
mst

To:

1. The Inspector of Police,
Vaitheeswaran Kovil Police Station,
Vaitheeswaran Kovil,
Mayiladuthurai District.

2. The Public Prosecutor,
High Court of Madras.



WEB COPY



Crl.O.P.No.24965 of 2022

V.SIVAGNANAM, J.

mst

Crl.O.P. No.24965 of 2022

14.10.2022