



Crl.O.P.No.28149 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2022

CORAM:

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.O.P.No.28149 of 2022

and

Crl.M.P.No.17316 of 2022

M.Mariya Stalin

... Petitioner

Vs.

The State Rep. by
The Inspector of Police,
Railway Police,
Mayiladuthurai.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the entire records of the order dated 01.11.2022 in Crl.M.P.No.712 of 2022 in S.C.No.193 of 2017 passed by the learned Additional District Judge, Mayiladuthurai, set aside the same.

For Petitioner : Mr.T.Elumalai

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



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ORDER

This Criminal Original petition has been filed to set aside the order passed by the learned Additional District Judge, Mayiladuthurai in Crl.M.P.No.712 of 2022 in S.C.No.193 of 2017 dated 01.11.2022.

2.The learned counsel appearing for the petitioner submitted that the petitioner is an accused in S.C.No.193 of 2017 on the file of the learned Additional District Judge, Mayiladuthurai. The respondent police prosecuted the petitioner for having committed offences punishable under Sections 294(b), 353 of IPC and Section 3(1) of TNPPDL Act. He further submitted that on 08.09.2022, three witnesses were examined as Pws 5 to 7 on the side of prosecution. Since there was an Advocate boycott on that day, petitioner was not able to cross examine the above said witnesses. Therefore, petitioner had filed a petition under Section 311 of Cr.P.C., and the same was dismissed by the Trial Court on 01.11.2022 on the ground that the reason stated by the counsel for the petitioner is not sufficient to recall the witnesses. In the Trial Court, the prosecution examined 9 witnesses. Now, the petitioner is seeking one more chance to cross examine the witnesses to place his defence. The



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petitioner is now ready to cross examine the witnesses without getting any adjournment and ready to pay the cost to the witnesses. Hence, the present petition has been filed.

3.The learned Government Advocate (crl.side) submitted that on the side of the prosecution Pws 1 to 9 were examined and the prosecution side evidence was closed on 10.10.2022 and the case has been posted for questioning under Section 313 Cr.P.C.

4. I have considered the matter in the light of the submissions made by the learned counsel for the petitioner and the learned Government Advocate (crl.side) for the respondent

5. A Perusal of records, reveals that the petitioner is an accused in S.C.No.193 of 2017 on the file of the learned Additional District Judge, Mayiladuthurai. The respondent police prosecuted the petitioner for having committed offences punishable under Sections 294(b), 353 of IPC and Section 3(1) of TNPPDL Act. In the Trial Court, prosecution examined 9 witnesses. No doubt, all the prosecution witnesses have to be cross examined



on the same day itself. The Hon'ble Supreme Court also insisted to cross examine the witnesses on the same day or on the following days. 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 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



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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].'

6. In the present case, the petitioner failed to cross examine the witnesses since there was an advocate boycott. In order to give fair chance, the petitioner has to be permitted to cross examine the witnesses. Therefore, in order to give one more chance to the petitioner to face the prosecution case and to place his defence, I am inclined to allow this petition.



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7. Accordingly, the order passed by the learned Additional District Judge, Mayiladuthurai in Crl.M.P.No.712 of 2022 in S.C.No.193 of 2017 dated 01.11.2022 is hereby set aside. The Trial Court is directed to recall the prosecution witnesses PW5 to 7 and the petitioner is also directed to cross examine Pws.5 to 7 without getting any adjournment and pay the cost to the witnesses.

8. With the above direction, this Criminal Original Petition stands allowed. Consequently, connected Criminal Miscellaneous Petition is closed.

17.11.2022

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

shk

To

1. The Inspector of Police,
Railway Police,
Mayiladuthurai.

2. The Public Prosecutor,



High Court of Madras.

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V.SIVAGNANAM, J.
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