



Crl.O.P.No.28152 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2022

CORAM:

THE HONOURABLE MS JUSTICE R.N.MANJULA

Crl.O.P.No.28152 of 2022 and
Crl.M.P.No.17318 of 2022

1. Senthil
2. John Bosco @ Thangaraju
3. Thomini
4. Anthoniyammal
5. Chinnappa

... Petitioners

Vs.

The State of Tamil Nadu,
rep. By the Sub Inspector of Police,
Veraiyur Police Station,
Tiruvannamalai.
Crime No.446 of 2019

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the entire records of the order, dated 16.05.2022 in Crl.M.P.No.1077 of 2022 in C.C.No.446 of 2019 passed by the learned Judicial Magistrate-I, Tiruvannamalai and set aside the same.

For Petitioners : Mr.C.Premkumar

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



Crl.O.P.No.28152 of 2022

ORDER

This Criminal Original Petition has been filed to call for the entire records of the order, dated 16.05.2022 in Crl.M.P.No.1077 of 2022 in C.C.No.446 of 2019 passed by the learned Judicial Magistrate-I, Tiruvannamalai and set aside the same.

2. The petitioners who are the accused in C.C.No.446 of 2019, have filed a petition under Section 311 of Cr.P.C., to recall PW1 for cross examination. The said petition was dismissed on 16.05.2022 by the learned Judicial Magistrate-I, Tiruvannamalai. Aggrieved over the said order, this Criminal Original Petition has been preferred by the petitioners.

3. Heard the learned counsel for the petitioners and the learned Government Advocate (Crl. Side) appearing for the respondent.

4. The learned counsel for the petitioners would submit that the learned trial Judge had closed the cross examination on the day when PW1 was present for chief examination without giving an opportunity for cross examination.

5. It is needless to mention that whenever the witnesses are present



CrI.O.P.No.28152 of 2022

for examination, the petitioners ought to have made use of the opportunity to cross examine them, unless there is any extraordinary reasons to defer the cross examination to some other day. Hence, the learned trial Judge has rightly observed that the prosecution witness must be cross examined by the accused on the date of chief examination itself and even deferring the cross examination cannot be made without any special reason.

6. However, without cross examining the witnesses, it is not possible to conclude the proceedings effectively. Hence, I feel it is appropriate to grant an opportunity to cross examine P.W.1, but on the following conditions:

- i. the petitioners are directed to pay a cost of Rs.2,000/- (Rupees Two thousand only) jointly to PW1 on the day before starting to cross examine;
- ii. the learned trial Judge shall summon the witness by fixing a date;
- iii. the petitioners shall cross examine the witness P.W.1 on the same day without making him to wait in the Corridors of the Court;
- iv. failure on the part of the petitioners to comply the above conditions,



CrI.O.P.No.28152 of 2022

will deprive them from getting the benefit of this order.

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7. With the above directions, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

18.11.2022

vum

Index:yes/No

Speaking Order / Non speaking order

To

1. The Judicial Magistrate-I,
Tiruvannamalai
2. The Sub Inspector of Police,
Veraiyur Police Station,
Tiruvannamalai.
3. The Public Prosecutor,
Madras High Court,
Chennai.



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Crl.O.P.No.28152 of 2022

R.N.MANJULA,J.

vum

Crl.O.P.No.28152 of 2022 and
Crl.M.P.No.17318 of 2022

18.11.2022