



Crl.O.P.No.28802 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2022

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Crl.O.P.No.28802 of 2022

Arulprakash

... Petitioner

Vs.

State Rep by
The Inspector of Police,
Thevoor Police Station,
Salem District.
(Crime No.200 of 2015)

... Respondent

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C., to set aside the order dated 13.04.2022 passed in Crl.M.P.No.82 of 2022 in S.C.No.25 of 2017 on the file of III Additional District Judge, Salem.

For Petitioner : Mr.R.Nalliyappan
For Respondent : Mr.S.Santhosh,
Govt. Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been filed to set aside the order dated 13.04.2022 passed in Crl.M.P.No.82 of 2022 in S.C.No.25 of 2017 on the file of III Additional District Judge, Salem.



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WEB COPY 2. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) for the respondent.

3. The petitioner is the first accused in S.C.No.25 of 2017 pending on the file of III Additional District Judge, Salem. He has filed a petition in Crl.M.P.No.82 of 2022 to recall P.W.1, 3 & 4 for cross-examination. The said petition was dismissed. Aggrieved over that, he is before this Court.

4. The learned counsel for the petitioner submitted that due to change of Counsel, the witnesses were not cross-examined on the day when they were examined-in-chief; in the interest of justice, an opportunity should be given to the petitioner for the purpose of cross-examining the witnesses.

5. The records would show that P.W.1 was examined on 24.07.2019 and P.W.3 & 4 were examined on 10.01.2020. The petitioner had filed a petition at his convenience only on 10.03.2022. The learned III Additional



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District Judge, Salem, has dismissed the petition by observing that there is no *bonafide* reasons stated to recall the witnesses for cross-examination.

6. However, the learned counsel for the petitioner submitted that despite the petitioner had engaged the Counsel, he did not get proper instruction from the petitioner to cross-examine the witnesses; later, the petitioner has changed the Counsel.

7. Changing the counsel cannot be the reason for failure to cross-examine the witnesses when the witnesses were present for chief examination. The learned III Additional District Judge, Salem has observed in his order that the petitioner is dragging the proceedings by filing the petition at his own convenience after causing a delay of nearly two years. However, the matter cannot be effectively disposed without giving an opportunity to the petitioner to cross-examine the witnesses.

8. In the result, this Criminal Original Petition is allowed and the order passed in Crl.M.P.No.82 of 2022 in S.C.No.25 of 2017 dated



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13.04.2022 by III Additional District Judge, Salem, is set aside, on condition that the petitioner is directed to pay a cost of Rs.2,000/- to each of the witnesses while they present for cross-examination and the cross-examination should be done in one and the same day. The petitioner should not make the witnesses to wait in the Court Corridor for long by frequently passing over the matter. Failure to comply the said condition will deprive the benefit of this order and this order shall stand dismissed automatically.

24.11.2022

Index: Yes/No
Internet: Yes/No
gsk



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WEB COPY To

- 1.III Additional District Judge,
Salem.
- 2.The Inspector of Police,
Thevoor Police Station,
Salem District.
- 3.The Public Prosecutor,
High Court, Madras.



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R.N.MANJULA ,J.

gsk

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