



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.02.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P. (MD)No.2286 of 2022

and

Crl.M.P. (MD)No.1672 of 2022

WEB COPY

1.Jimmakhan
2.A.Suresh
3.Moovendran
4.Shiekh Mohammed
5.Ganapathi

...Petitioners/

Accused 1,2,4,9,10

Vs.

The Inspector of Police,
Fort Police Station, (L&O)
Trichy City.
Crime No.1244 of 2012

...Respondent/ Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the record and set aside the order dated 29.11.2021 made in C.M.P.No.12064 of 2021 in C.C.No.7 of 2014 on the file of learned Judicial Magistrate No.I Trichy District.

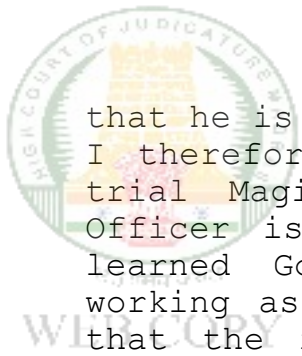
For Petitioners : Mr.B.Jammeel Arasu
For Respondent : Mr.M.Sakthi Kumar
Government Advocate (Crl.Side)

ORDER

Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents.

2. The petitioner is facing trial in C.C.No.7 of 2014 on the file of Judicial Magistrate No.1, Trichy. On 15.11.2021, PW14/Investigation Officer was examined. He was, however, not cross examined on the said date. Hence, evidence was closed. Therefore, the petitioner filed a petition under Section 311 Cr.P.C for recalling him. The said petition was dismissed vide order dated 29.11.2021. Challenging the same, this Criminal Original Petition has been filed.

3. The reason given by the trial Magistrate cannot be faulted. It is the duty of the defence counsel to cross examine the witness after the chief examination is over. In this case, the reason given for not cross examining is that the defence counsel was engaged in some other Court. This reason cannot be accepted. When the trial was taking place and the witness was examined, it is the duty of the defence counsel to be present. The defence counsel cannot assume



that he is entitled to file a recall petition later at his own pace. I therefore will have to necessarily endorse the opinion of the trial Magistrate. However, I wanted to know, if Investigation Officer is now posted in some other place. It is stated by the learned Government Advocate that the Investigation Officer is working as Assistant Commissioner in Trichy only. It is also seen that the recall petition was filed immediately. It is for this reason, I am showing some indulgence. In this view of this matter, the order impugned in the Criminal Original Petition is set aside.

4. The petitioner gives an undertaking that on the next hearing date, when the Investigation Officer appears again for cross examination, he will be cross examine on the same day and the petitioner will not adopt any dragging on tactics. By recording the undertaking of the petitioner given through their counsel, the Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Inspector of Police,
Fort Police Station, (L&O)
Trichy City.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Crl.O.P. (MD)No.2286 of 2022

04.02.2022

RD(23.02.2022) 2P 3C