



CrI.O.P.(MD) No.7784 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**RESERVED ON : 10.11.2022
DELIVERED ON : 25.11.2022**

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**CORAM:
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP**

CRL.O.P (MD) No.7784 of 2022

S.Kumaresan

...Petitioner / Third Party /
Defacto Complainant / PW1

vs.

1.The Superintendent of Police,
Sathankulam Police Station,
Thoothukudi.

... Respondent / Respondent /
Complainant

2.Subramanian

3.Kalirajan

4.Muthuramalingam

... Respondents / Petitioners /
Accused 1 to 3

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the entire records pertaining to the order passed by the learned Sessions Judge, Special Court for trial of cases under SC/ST (PoA) Act, Thoothukudi, in Cr.M.P.No.841 of 2021 in S.C.No.25 of 2020 vide order, dated 01.03.2022 and set aside the same.



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For Petitioner : Mr.A.Sivasubramanian
For R-1 : Mr.B.Nambiselvan
Additional Public Prosecutor
For R2 to R4 : No Appearance

ORDER

The learned Counsel for the Petitioner submitted that the Petitioner herein is the Defacto Complainant and he had filed this petition seeking to set aside the order passed by the learned Sessions Judge, Special Court for trial of cases under SC/ST (PoA) Act, Thoothukudi, in Cr.M.P.No.841 of 2021 in S.C.No.25 of 2020, dated 01.03.2022.

2. The learned Counsel for the Petitioner submitted that the case arose out of a brutal attack on P.W.2 on 30.04.2014, based on which, a complaint was registered. Subsequently, a First Information Report was registered in Crime No.204 of 2014 and after investigation, an Final Report was laid for the offence under Sections 294(b), 342, 307 and 506(ii) of IPC r/w.3(1)(r) (s), 3(2) (Va) SC/ST (PoA) Act Amendment Ordinance 2014 and 3(2)(V)



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SC/ST (PoA) Act, 1989 before the learned Judicial Magistrate, Sathankulam, and the case was committed to the II Additional Sessions and District Judge, Tirunelveli, and the same was taken on file in S.C.No.133 of 2015.

3.The Respondents 2 to 4 had filed CrI.M.P. No.694 of 2017 under Section 311 Cr.P.C. before the learned II Additional Sessions Judge, Tirunelveli, to recall the witnesses P.W.1 and P.W.2 and the same was allowed. Once again, on 02.04.2018, the accused 1 to 3 had filed CrI.M.P.No.1354 of 2018 seeking recall P.W.19, who is Investigation Officer and the same was allowed. Accordingly, the entire prosecution witness examination was completed and P.W.19 also was recalled and cross examined on 20.06.2018. On 05.07.2018, the case was posted for examining the accused under Section 313 Cr.P.C. On that day, none of the accused appeared and NBW was issued. On 31.10.2019, NBW were recalled by all the accused and they were examined under Section 313 Cr.P.C. At that time, they had answered that there are no defence witnesses. The case was posted for arguments and at the stage of arguments, the case was transferred to the Court of learned Sessions Judge, Special Court for trial of cases under



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SC/ST (PoA) Act, Thoothukudi and the case was renumbered as S.C.No.25 of 2020. The case was pending at the stage of commencement of prosecution arguments, the learned Additional Public Prosecutor concluded his arguments. When the case was posted for defence arguments, the Respondents 2 to 4 had once again filed a petition under Section 311 Cr.P.C. in Crl.M.P.No.841 of 2021 to recall the witness P.W.1 to P.W.3, P.W.10, P.W.13, P.W.17 to P.W.19.

4. By ignoring the vehement objections of the Special Public Prosecutor and the Defacto Complainant, the learned Sessions Judge, Special Court for trial of cases under SC/ST (PoA) Act, Thoothukudi, has passed an order by allowing the petition in Crl.M.P. No.841 of 2021 in S.C.No.25 of 2020, dated 01.03.2022.

5. Aggrieved by the same, the Defacto Complainant had approached this Court invoking the powers of this Court under Section 482 of Cr.P.C. to prevent the abuse of the process of law.



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6.It is the submissions of the learned Counsel for the Petitioner that the accused had exercised his right for valuable defence by cross examining all the witnesses already cross examined before the learned Principal District and Sessions Judge, Special Court for trial of cases under SC/ST (PoA) Act, Tirunelveli. Further, they had recalled the witnesses twice by filing CrI.M.P.No.694 of 2014 on 15.03.2017 and once again, they had filed a second petition on 02.04.2018 in CrI.M.P.No.1354 of 2018. This is the third time misusing the provision under Section 311 Cr.P.C. with the claim that they had obtained “few documents”, based on which, they wanted to recall the witnesses, who were cross examined before the learned II Additional Sessions and District Judge, Tirunelveli. This cannot be continued and the right under Section 311 Cr.P.C. cannot be exercised without restrictions. It is nothing but an abuse of process of law.

7. The learned Counsel for the Petitioner also invited the attention of this Court to the cross examination of all the witnesses extensively by the learned Counsel for the Accused and he includes copies of the deposition along with the petition in support of his contention. It is found that the learned Counsel for the Petitioner had invited the attention of this Court to



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the order passed by the learned Sessions Judge, Special Court for trial of cases under SC/ST (PoA) Act, Thoothukudi, where in, stated that,

“Though they were cross examined the P.W.1 to P.W.3, P.W.10, P.W.13, P.W.17 to P.W.19 were not cross examined fully, due to lack of documents. Now, the Petitioners have received some documents, which are capable to bring out some facts with regard to this case. If they were cross examined by keeping the documents, then only fair disposal can be given. No prejudice will be caused to the prosecution, if they were given chance to cross examine the above said witnesses.

The learned Special Public Prosecutor has submitted that already the said witnesses were cross examined sufficiently and already two petitions U/s.311 Cr.P.C. in CrI.M.P.No.694 of 2017 and in CrI.M.P.No.1354 of 2018 filed and allowed and this petition has been filed only to drag on the proceedings and this petition is liable to be dismissed.

Section 311 Cr.P.C. reads as follows:

Power to summon material witness, or examine person present:-
Any Court may, at any stage of any inquiry, trial or other proceeding under this code, Summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re



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examine any person already examined; and the Court shall Summon and examine or recall and re examine any such person if his evidence appears to be essential to the just decision of the case.”

8. The learned Counsel for the Petitioner had invited the attention of this Court to the judgment of Honourable Supreme Court in ***State of Haryana Vs. Ram Mehar and others*** and the reported ruling of the Honourable Supreme Court in ***Vinod Kumar Vs. State of Punjab reported in (2015) 1 MLJ (Crl) 288 (SC)***, to prevent from recalling the witnesses at the whims and fancies of the accused and their counsels. It is nothing but harassing the victims of the crime and prosecution witnesses, which cannot be allowed leniently.

9. Here, in this case, the principles of a fair and speedy trial are allowed by the consideration of Constitution of India.

10. As rightly pointed out by the learned Counsel for the Petitioner, the Petitioner had exercised the right of cross examination, before which, the case was transferred from file of the learned Sessions Judge, Special



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Court for trial of cases under SC/ST (PoA) Act, Thoothukudi. When the case was posted for defence arguments, the conduct of the Petitioner in seeking to recall the very same witnesses who had already been cross examined exhaustively amounts to misuse of the provision of Section 311 Cr.P.C. and its limit. It is against the reported ruling of the Honourable Supreme Court in *Vinod Kumar Vs. State of Punjab reported in (2015) 1 MLJ (Crl) 288 (SC)*.

11. Here, the Petitioner is none other than the Defacto Complainant. He had approached this Court to prevent the abuse of process of law by the trial Court by allowing the petition filed by the Petitioner under Section 311 Cr.P.C. for the third time, P.W.1 to P.W.3, P.W.10, P.W.13, P.W.17 to P.W.19 were examined, who were already been cross-examined and enclosed the copies in the typedset which are already available in the typedset. Therefore, the contention of the Petitioner is found acceptable. In the light of the enunciated principle of fair trial for the just decision of the case, the accused cannot be granted the permission, which had already been exhausted.



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12. After transfer of the case, the accused were under the pretext of engaging a new counsel seeks to recall the witnesses P.W.1 to P.W.3, P.W. 10, P.W.13, P.W.17 to P.W.19 and it is found unacceptable as rightly observed in the the judgment of Honourable Supreme Court of India in ***State of Haryana Vs. Ram Mehar and others in Criminal Appeal Nos. 805-806 of 2016 (@S.L.P. (Crl.) No.3278-79 of 2016).***

13.In criminal cases, the accused can engage a new counsel on his choice and also during trial, he is at liberty to change the counsels and if those things are permitted, it amounts to harassment of victim of crime as well the prosecution witnesses. The guaranteed right under the Constitution of India for fair and speedy trial includes the rights of the prosecution witness and victim of the trial. The victim of the crime and the prosecution witnesses cannot be harassed by the accused by recalling them on the whims and fancies of the Accused making the prosecution to suffer and cause mental agony to them, which cannot be allowed by the Court of Law under the guise of a fair and speedy trial. The Respondents 2 to 4 / Accused having exercised their rights to cross examination and it was already granted



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twice by retrial in CrI.M.P.No.694 of 2017 and in CrI.M.P.No.1354 of 2018, which are filed without any restrictions. Here, the Petition under Section 311 Cr.P.C. is only at the stage of conclusion of the prosecution arguments and at that stage of defence arguments, it is nothing but a dilatory tactics. Having exhausted the right of cross examination, the accused had lost their right to recall the witness and after having exercised their right of cross examination, they cannot be allowed to prevent the Court from pronouncing judgment by seeking to recall the witnesses at the stage of arguments by the defence counsel.

14. In the light of the above discussion, this petition is allowed. The order passed by the learned Sessions Judge, Special Court for trial of cases under SC/ST (PoA) Act, Thoothukudi in Cr.M.P.No.841 of 2021 in S.C.No. 25 of 2020, dated 01.03.2022 is set aside.

15. The learned Sessions Judge, Special Court for trial of cases under SC/ST (PoA) Act, Thoothukudi, is directed to hear the arguments and pronounce the judgment within a month from the date of receipt of copy of the order or from the date of uploading of the order on the website of this



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Court. If the accused once again abscond and NBW issued, the the learned Sessions Judge, Special Court for trial of cases under SC/ST (PoA) Act, Thoothukudi, shall cancel the bail of the accused and on production of the accused on NBW, they shall be detained in Prison till the judgment is delivered. With the above directions, this Criminal Original Petition is disposed of.

In the result, this Criminal Original Petition is allowed. The order passed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under SC/ST (PoA) Act, Thoothukudi, in Crl.M.P.No.841 of 2021 in S.C.No.25 of 2020 dated 01.03.2022 is set aside.

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SATHI KUMAR SUKUMARA KURUP, J.

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To

- 1.The Superintendent of Police,
Sathankulam Police Station,
Thoothukudi.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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