



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.06.2022

CORAM:

THE HONOURABLE MR. JUSTICE **V. SIVAGNANAM**

Crl.O.P.(MD) No.8736 of 2022

and

Crl.M.P(MD) No.5865 of 2022

WEB COPY

Siraimetan,

: Petitioner/Sole Accused

Vs

The State through
The Inspector of Police,
Manamadurai Police Station,
Manamadurai,
Sivagangai District.
Crime.No.40 of 2016.

: Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying this Court to call for the entire records pertaining to the order passed in Crl.M.P.No.904 of 22 dated 07.04.2022 on the file of the Chief Judicial Magistrate Court, Sivagangai and set aside the same and allow this petition to recall PW-1 to PW-4 for cross examination.

For Petitioner : M/s.Muthukamatchi V,
For Respondent : Mr.R.Suresh Kumar,
Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been filed seeking to set aside the order passed by the learned Chief Judicial Magistrate Court, Sivagangai, in Crl.M.P.No.904 of 2022, dated 07.04.2022 and to recall PW-1 to PW-4 for cross examination.

2.The learned Counsel appearing for the petitioner submitted that the petitioner has been prosecuted by the respondent police for the offence punishable under Section 307 of IPC. Hence, a case in S.C.No.118 of 2018, has been filed before the Chief Judicial Magistrate, Sivagangai. Thereafter, PW.No.1 to PW.No.4 were examined on 07.12.2018, but they were not cross examined by the petitioner, for the reason that, while examining the PW-1 to PW-4, the complainant/Vijayakumar was not examined. But, now the complainant was examined as PW-5, on 09.03.2022 and he has not supported the prosecution case and hence treated as hostile. Under these circumstances, they want to cross-examine the PW-1 to PW-4.

3.The learned Government Advocate (Crl.Side) appearing for the respondent submitted that already PW-1 to PW-4 were examined and the complainant was also subsequently examined on 09.03.2022, but he was not supporting the prosecution case and he was treated as a hostile



witness.

4.I have considered the submissions made by both the Counsels. Admittedly, the petitioner was prosecuted by the respondent police, for having attempted to commit murder upon the complainant, for the offence punishable under Section 307 of IPC. The case was tried and taken on file by the learned Chief Judicial Magistrate, Sivagangai, in S.C.No.118 of 2018, and the PW.1 to PW.4 were examined, but at that time, the complainant was not examined. For that reason, the petitioner/accused had not cross-examined the PW.1 to PW.4. Now, the complainant was also examined and being not supported the prosecution case, he was treated as a hostile witness by the prosecution. Under these circumstances, the petitioner wants to cross-examine the PW-1 to PW-4

5.With regard to the recalling of the witnesses for cross-examination, the Hon'ble Supreme Court laid down the principles as follows:

'In Rajaram Yadav's case the Supreme Court has summed up the legal position relating to Section 311 Cr.P.C and has enumerated the following principles which will have to be borne in mind by the Courts:

(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?

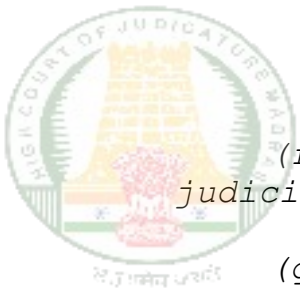
(b) The exercise of the widest discretionary power under Section 311 Cr.P.C should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.

(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

misadministration 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 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 order to give an opportunity to the petitioner to cross-examine PW-1 to PW-4, this criminal original petition stands allowed. The petitioner should cross-examine the witnesses PW-1 to PW-4 on the same date and further, he has to give a day cost to all the PW-1 to PW4. Accordingly, the order passed by the learned Chief Judicial Magistrate Court, Sivagangai, in Crl.M.P.No.904 of 2022, dated 07.04.2022, is set aside. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

/07/2022

Sub Assistant Registrar(CS)

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To

1.The Chief Judicial Magistrate Court, Sivagangai

2.The Inspector of Police,
Manamadurai Police Station,
Manamadurai,
Sivagangai District.

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

+1 CC to M/s.V.MUTHUKUMATCHI, Advocate (SR-25489[F] dated
14/06/2022)

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NSN(CO)

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