



CrI.O.P.(MD) No.12008 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.07.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRL.O.P (MD) No.12008 of 2022

and

CrI.M.P(MD) No.7587 of 2022

Kartheeshwaran

... Petitioner

Vs

The Inspector of Police,
Bodinayakkanur Town Police Station,
Bodinayakkanur,
Theni District.
(In Crime No.1063 of 2018)

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records and set-aside the order passed by the learned Principal District Judge, Theni in Cr.M.P.No.1716/2022 in S.C.No.97 of 2019, dated 20.06.2022 in respect of dismissing the petition filed by the petitioner under Section 311 of Cr.P.C and direct the said Court to recall the witness, within a time frame fixed by this Court.

For Petitioner : Mr.K.Sivabalan

For Respondent : Mr.R.Suresh Kumar
Government Advocate (CrI.Side)



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ORDER

This Criminal Original Petition has been filed challenging the impugned order, dated 20.06.2022, made in Cr.M.P.No.1716/2022 in S.C. No.97 of 2019 passed by the learned Principal District Judge, Theni.

2. The learned counsel for the petitioner submitted that the petitioner is an accused in S.C.No.97 of 2019. The petitioner has been prosecuted for the offences punishable under Sections 302 and 449 of IPC. The prosecution witnesses P.W.1 to P.W.14 have been examined. The witnesses P.W.1 to P.W.5 and P.W.10 to P.W.12 have already been cross examined by the accused through his previous counsel in an elaborate manner. However, the witnesses P.W.6 to P.W.9 and P.W.13 and P.W.14 have not been cross examined. For that purpose, the petitioner has filed a petition to recall the witnesses under Section 311 of Cr.P.C in Cr.M.P.No.1716 of 2022 before the learned Principal District Judge, Theni, which was partly allowed in respect of the witnesses P.W.6 to P.W.9, P.W.13 and P.W.14 and thereby, dismissed the petition with regard to the witnesses P.W.1 to P.W.5 and P.W.



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10 to P.W.12 on the ground that already chance has been given to the petitioner for his cross examination.

3. The learned Government Advocate (Crl.Side) appearing for the respondent submitted that the witnesses i.e., P.W.1 to P.W.5 and P.W.10 to P.W.12 have been elaborately cross-examined by the learned counsel appearing for the accused and therefore allowed the petition with regard to the witnesses P.W.6 to P.W.9, P.W.13 and P.W.14 for cross examination. He further submitted that the case is posted for cross-examination of the recalled witnesses P.W.6 to P.W.9, P.W.13 and P.W.14.

4. I have considered the submissions made by the learned counsel for the petitioner and the learned Government Advocate (Criminal Side) for the respondent.

5. On perusal of the records reveals that the petitioner is an accused in S.C.No.97 of 2019. He has been prosecuted for the offences under Section 449 and 302 I.P.C. So far, on the side of prosecution witnesses P.W.1 to P.W. 14 have been examined. Witnesses P.W.1 to P.W.5, P.W.10 to P.W.12



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have been cross examined by the accused through his previous counsel in an elaborate manner. However, the witnesses P.W.6 to P.W.9, P.W.13 and P.W.14 have not been cross-examined. At this stage, the petitioner has filed an application under Section 311 Cr.P.C in Cr.M.P.No.1716 of 2022 before the learned Principal District Judge, Theni, to recall the witnesses for fresh cross-examination. The learned Judge, considering the matter that since the witnesses P.W.1 to P.W.5 and P.W.10 to P.W.12 have already been cross examined and did not want to recall the witnesses and thereby, dismissed the petition in this regard. But, with regard to the remaining witnesses i.e., P.W.6 to P.W.9, P.W.13 and P.W.14 that petition was allowed. If the witnesses recalled after their cross-examination, most of the witnesses may turned hostile. Which is fatal to the prosecution case.

6. In these circumstances, in many cases, the Hon'ble Supreme Court and this Court has repeatedly held that the witnesses has to be cross examined earlier and therefore, there is no merit in this petition.



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7. Hence, this Criminal Original Petition is dismissed. Consequently,
the connected Miscellaneous Petition is closed.

04.07.2022

Internet: Yes./No
Index: Yes/no
ebsi

To

1. The Inspector of Police,
Bodinayakkanur Town Police Station,
Bodinayakkanur,
Theni District.

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



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V.SIVAGNANAM, J.

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ORDER IN
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