



CrI.O.P.(MD) No.13028 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 21.07.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRL.O.P (MD) No.13028 of 2022

and

CRL.M.P(MD) No.8313 of 2022

T.Murugan

... Petitioner

Vs

The Inspector of Police,
TIW North Police Station,
Trichy.
(Crime No.226 of 2019)

... Respondent

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to set-aside the order dated 09.03.2022 passed in Cr.M.P. No.2147 of 2022 in C.C.No.1116 of 2021 on the file of the Judicial Magistrate No.I, Trichy.

For Petitioner : Mr. S.Sankar

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



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ORDER

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This Criminal Original Petition has been filed to set-aside the order dated 09.03.2022 passed in Cr.M.P. No.2147 of 2022 in C.C.No.1116 of 2021 on the file of the Judicial Magistrate No.I, Trichy.

2.The learned counsel appearing for the petitioner has submitted that the petitioner is an accused in C.C.No.1116 of 2021 on the file of the Judicial Magistrate No.I, Trichy. The petitioner was prosecuted by the respondent police for the offences under Sections 279 and 304(A) of IPC. In this case, P.W.1 to P.W.3 were examined on the prosecution side on 27.12.2021. At that time, P.W.1 to P.W.3 were not cross examined by the petitioner/accused. In order to place his defense, he want to cross examine those witnesses, filed petition under Section 311 of Cr.P.C, but the same was dismissed by the learned Magistrate. Hence, the petitioner has filed this petition to recall those witnesses, by way of setting aside the order passed by the learned Judicial Magistrate No.I, Trichy.

3.The learned Government Advocate (CrI.Side) has submitted that sufficient opportunity has been given to the petitioner for cross examining



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those witnesses. Since the petitioner has not cross examine those witnesses, the prosecution has proceeded further. He further submitted that the trial Court dismissed the recall petition by relying upon the judgment of the Apex Court in the case of *Vinoth Kumar Vs. State of Punjab*. Therefore, there is no error on the part of order and there is no interference is required.

4.Perusal of records, it is seen that the petitioner is an accused in C.C.No.1116 of 2021 on the file of the Judicial Magistrate No.I, Trichy. The petitioner was prosecuted by the respondent police for the offences under Sections 279 and 304(A) of IPC. After framing of charges, P.W.1 to P.W.3 were examined on the prosecution side. At that time, P.W.1 to P.W.3 were not cross examined by the petitioner/accused. In order to place his defense, he want to cross examine those witnesses, filed petition under Section 311 of Cr.P.C, but the same was dismissed by the trial Court. In this case, P.W.2 is concerned, she has not deposed anything about the accused. Therefore, P.W.2 cannot be recalled for the purpose of cross examination. After examination of witnesses, the cases is posted for further examination of the witnesses on 14.08.2022.



5.I considered the matter in the light of the submissions made on either side, an opportunity has to given to this petitioner to place his defense effectively.

6.Admittedly, the petitioner failed to cross examine those witnesses, when chief examination was done. With regard to the recalling of 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 miscarriage 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].'

7.Considering the decision laid down by the Honourable Supreme Court cited supra and considering the nature of offence, I am inclined to give an opportunity to the petitioner to place his defense, by way of cross



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examining those witnesses.

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8. Accordingly, the impugned order dated 09.03.2022 passed in Cr.M.P. No.2147 of 2022 in C.C.No.1116 of 2021 passed by the learned Judicial Magistrate No.I, Trichy is hereby set aside with regard to P.W.1 and P.W.3, on condition that the witnesses viz., P.W.1 and P.W.3 have to be cross examined on the same day, without seeking adjournment and the petitioner has to pay day cost for all the witnesses to come back to the Court for giving evidence. The learned Judicial Magistrate No.I, Trichy is hereby directed to recall P.W.1 and P.W.3 to enable the petitioner to cross examine the witnesses on the same day and further collect the day cost for all the witnesses, from the petitioner and pay to the witnesses.

9. Accordingly, these Criminal Original Petition is allowed. Consequently, the connected criminal miscellaneous petition is closed.

21.07.2022

Internet: Yes./No

Index: Yes/no

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To

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1. The learned Judicial Magistrate No.I,
Trichy.
2. The Inspector of Police,
TIW North Police Station,
Trichy.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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V.SIVAGNANAM, J.

vsg

ORDER IN
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