



Crl.O.P.(MD) No.13382 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 25.07.2022

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THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRL.O.P (MD) No.13382 of 2022

1. Muthu Ramalingam
2. Muthu Sudar
3. Arunachalam

... Petitioners/Accused Nos.1 to 3
Vs

The State Represented by
The Inspector of Police,
Eral Police Station,
Thoothukudi District.
(Crime No.331 of 2020)

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records of the learned II Additional District and Sessions Judge, Thoothukudi, in Cr.M.P.No.3645 of 2022 and set aside the order, dated 14.07.2022.

For Petitioners : Mr.A.Joseph Zinoson

For Respondent : Mr.R.Suresh Kumar
Government Advocate (Crl.side)



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ORDER

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This Criminal Original Petition has been filed challenging the impugned order passed by the learned II Additional District and Sessions Judge, Thoothukudi in Cr.M.P.No.3645 of 2022, in S.C.No.236 of 2020 dated 14.07.2022.

2. The learned counsel for the petitioners submitted that the petitioners are accused in S.C.No.236 of 2020 on the file of the learned II Additional District and Sessions Judge, Thoothukudi. They were prosecuted by the respondent police for the offences under Sections 294(b), 324, 307, 302 and 506 (ii) IPC. In this case, L.W.37 - Judicial Magistrate, Srivaigundam, had recorded the statements of the witnesses, viz., P.W.1 to P.W.4 and P.W.8, under Section 164 Cr.P.C. During the trial, the prosecution did not examine the said Judicial Magistrate, Srivaigundam. Hence, the petitioners filed an application in Cr.M.P.No.3645 of 2022 for recalling the witness - L.W.37, Judicial Magistrate, Srivaigundam, for the examination with regard to the contradiction in the statements of P.W.1 to P.W.4 and P.W.8 recorded under Section 164 Cr.P.C. The learned Judicial



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Magistrate rejecting the contention of the petitioners, dismissed the said petition. Aggrieved by this order, the present Criminal Original Petition has been filed.

3. The learned Government Advocate (Crl Side) appearing for the respondent submitted that the case is posted for examining the defence side witnesses.

4. I have considered the matter in the light of the submissions made by the learned counsel on either side.

5. On perusal of the records, it is seen that the petitioners are the accused in S.C.No.236 of 2020 on the file of the learned II Additional District and Sessions Judge, Thoothukudi. They were prosecuted for having committed the offences under Sections 294(b), 324, 307, 302 and 506 (ii) IPC. Now, the matter has been posted for examining the defence side witnesses. L.W.37 - Judicial Magistrate, Srivaigundam, had recorded the statements of P.W.1 to P.W.4 and P.W.8 under Section 164 Cr.P.C. In the impugned order, the learned Judge dismissed the petition for recalling L.W.



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37 for examining as a defence witnesses in order to elicit contradiction in the statements of P.W.1 to P.W.4 and P.W.8 recorded under Section 164 Cr.P.C.

6. The legal principle with regard to Section 164 Cr.P.C statement is that any statement recorded under Section 164 Cr.P.C can never be used as substantive evidence of the truth of the facts but it may be used for corroboration or for contradiction of the witness who made it under Sections 157 and 145 of the Indian Evidence Act. A statement under Section 164 Cr.P.C is recorded by the Judicial Magistrate and at that time, he is not conducting any enquiry in relation to the matter of the fact. Only the evidence given by the witnesses before the trial Court is substantial evidence. It does not require any formal proof. It is not necessary to summon the Magistrate recording the prior statement to prove the contents thereof. Therefore, for the purpose of eliciting contradiction in the statements recorded under Section 164 Cr.P.C, the Judicial Magistrate need not be summoned by the accused.



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7. In these circumstances, examination of Judicial Magistrate who has recorded the statements of the witnesses under Section 164 Cr.P.C is unwarranted and this Court finds no infirmity or illegality in the order passed by the Judicial Magistrate and accordingly, this Court finds no merit in this petition.

8. At this juncture, the learned Counsel for the petitioners seek liberty to file a petition to recall the witnesses, viz., P.W.1 to P.W.4 and P.W.8 for the purpose of contradicting the evidence in the statements recorded under Section 164 Cr.P.C.

9. Accordingly, this Criminal Original Petition is dismissed and liberty is given to the petitioners to approach the trial Court to file necessary application for recalling the witnesses - P.W.1 to P.W.4 and P.W.8 for the purpose of contradicting the evidence in the statements recorded under Section 164 Cr.P.C.

25.07.2022

Internet: Yes./No

Index: Yes/no

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Note: Issue order copy on 26.07.2022

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To

1. The II Additional District and Sessions Judge,
Thoothukudi.
2. The Inspector of Police,
Eral Police Station,
Thoothukudi District.
3. 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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