



CrI.O.P.(MD) No.13996 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.08.2022

CORAM:

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CrI.O.P.(MD) No.13996 of 2022
and CrI.MP(MD)No.8998 of 2022

R.Rajkumar

... Petitioner

Vs

The Inspector of Police,
Mallanginaru Police Station,
Virudhunagar District.
Crime No.16 of 2014..

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying this Court to call for the records pertaining to Cr.R.P.No.9 of 2022, dated 17.6.2022, on the file of Additional District and Sessions Judge, Virudhunagar, by confirming the order passed in Cr.MP.No.4122 of 2019 in CC.No.119 of 2014, dated 03.8.2019.

For Petitioner : M/s. Palanivel Rajan K.P.S

For Respondent : Mr.R.Suresh Kumar (R1)
Government Advocate (CrI.Side)



CrI.O.P.(MD) No.13996 of 2022

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ORDER

This Criminal Original Petition has been filed to challenge the impugned order Cr.R.P.No.9 of 2022, dated 17.6.2022, on the file of Additional District and Sessions Judge, Virudhunagar, by confirming the order passed in Cr.MP.No.4122 of 2019 in CC.No.119 of 2014, dated 03.8.2019, on the file of the Judicial Magistrate No.I, Virudhunagar.

2.The learned counsel for the petitioner submitted that the petitioner was prosecuted by the respondent Police in Crime No.16 of 2014, for the offence under Section 304(A) IPC. The final report has been taken on file as CC No.119 of 2014, on the file of Judicial Magistrate No.I, Virudhunagar. So far, the prosecution has examined 15 witnesses. The petitioner has failed to cross examine PW1 to PW4 on 26.06.2014, since he was absent on that day of chief examination of those witnesses. Hence, he has filed petition to cross examine PW1 to PW4, since PW1 and PW2 were eyewitness, PW3 and PW4 were corroborating witness to the occurrence. Without giving fair chance to the petitioner to defend the prosecution case, both the trial Court and the revision Court had dismissed the petitions.



Aggrieved by the same, he has filed this petition.

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3.The learned Government Advocate (CrI.Side) submitted that out of 18 witnesses, 15 witnesses had been examined so far. On 26.06.2014, PW1 to PW4 were examined and after a lapse of long time, this petition is filed only to drag on the proceedings. Hence, prays to dismiss the petition.

4.I considered the matter in the light of discussions adduced by both parties. Perusal of records reveal the fact that the petitioner is an accused in CC No.119 of 2014, concerned in Crime No.16 of 2014, for the offences under Section 304(A) IPC. On the side of prosecution, 15 witnesses had been examined. On the day of chief examination of PW1 to PW4, the petitioner has failed to cross examine those witnesses. On that day, the accused was not appeared and petition under Section 317 Cr.P.C was filed and allowed. Admittedly, PW1 and PW2 were eyewitness, PW3 and PW4 were corroborating witness to the occurrence. Under these circumstances, a fair opportunity has to be given to the petitioner to put forth his defence effectively.



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5. In **Rajaram Prasad Yadav vs. State of Bihar and another (AIR 2013 SC 3081)**, the Hon'ble 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.



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(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.



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(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. Therefore, considering the nature of offence, facts and circumstances and legal positions, I am inclined to give an opportunity to the petitioner to place his defence by way of cross examining those witnesses. Accordingly, the impugned order Cr.R.P.No.9 of 2022, dated 17.6.2022, on the file of Additional District and Sessions Judge, Virudhunagar is hereby set aside, on the following conditions:-

- The witnesses viz., PW1 to PW4 in CC No.119 of 2014 have to be cross examined by the petitioner on the same day, without seeking any adjournments.*



CrI.O.P.(MD) No.13996 of 2022

- *The petitioner has to pay the day cost for all the witnesses to come back to the Court for giving evidence.*

- *The Judicial Magistrate No.I, Virudhunagar is hereby directed to recall PW1 to PW4, to enable the petitioner to cross examine the witnesses on the same day and further to collect the day cost for all the witnesses, from the petitioner and to pay the same to the witnesses.*

10. With the above direction, these Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

03.08.2022

Internet: Yes
Index: Yes
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Note: Issue order copy on 03.08.2022

To

1. Judicial Magistrate No.I, Virudhunagar

2. The Inspector of Police,
Mallanginaru Police Station,
Virudhunagar District.
Crime No.16 of 2014..

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

7/8



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Crl.O.P.(MD) No.13996 of 2022

V.SIVAGNANAM, J.

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