



Crl.O.P.(MD) No.13850 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.08.2022

CORAM:

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

Crl.O.P.(MD) No.13850 of 2022

and

Crl.M.P.(MD) No.8874 of 2022

Rani,

: Petitioner

Vs

State represented through
The Sub Inspector of Police,
Sivagangai Taluk Police Station,
Sivagangai.
Crime No.137 of 2014.

: Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying this Court to set aside the order in Crl.MP.No.3451 of 2021 in Sessions Case No.41/2015, on the Additional District and Sessions Judge, Additional District Court, Sivagangai dated 20.06.2022.

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



Crl.O.P.(MD) No.13850 of 2022

ORDER

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2.The learned Counsel appearing for the petitioner submitted that in this case so far six prosecution witnesses have been examined and particularly, the witness PW-3/Raja was cross-examined by the petitioner, on 05.11.2020. While examining the witness PW-4/Akash Prabhu, he stated about the involvement of one Karnan, in the crime. Hence, the petitioner filed an application before the trial Court in Crl.M.P.No.3451 of 2021, seeking to cross-examine the witness PW-3. But, the same was dismissed on the ground that the witness PW-3 was already cross-examined on 05.11.2020.

3.The learned Government Advocate (Crl.Side) submitted that after examination of the prosecution witnesses, this case was posted on 06.08.2022 for examination of the Investigation Officer.



Crl.O.P.(MD) No.13850 of 2022

4.I have considered the submissions made by both the parties.

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5.On a perusal of records, it is seen that the petitioner herein, is the accused person in S.C.No.41 of 2015, on the file of the learned Additional District and Sessions Judge, Additional District Court, Sivagangai. The petitioner is prosecuted by the respondent police for having murdered her husband/Rama Chandran. Further, in this case, so far six prosecution witnesses have been examined and particularly, the witness PW-3/Raja was cross-examined by the petitioner, on 05.11.2020. While examining the witness PW-4/Akash Prabhu, he deposed about the presence of one Karnan, at the time of occurrence. Hence, the petitioner filed an application before the trial Court in Crl.M.P.No.3451 of 2021, seeking to cross-examine the witness PW-3. But, the same was dismissed on the ground that the witness PW-3 was already cross-examined on 05.11.2020. The witnesses PW-3 and PW-4 are eye-witnesses.

6.In view of the above, this Court is of the opinion that the witness PW-3 has to be cross-examined for the purpose stated by the learned Counsel appearing for the petitioner. A fair chance has to be given to an accused



person to place his/her defence to meet the prosecution case effectively.

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7. 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.

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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].'

8. Therefore, the impugned order passed in CrI.M.P.No.3451 of 2021 in S.C.No.41 of 2015, on the file of the learned Additional District and Sessions Judge, Additional District Court, Sivagangai, is hereby set aside. The trial Court is directed to recall the witness PW-3, for the purpose of cross-examination. Further, the petitioner is directed to cross-examine the witness PW-3 on the same day, that too, without getting any adjournment and also she has to pay a day cost to the witness PW-3 for attending the Court below.



Crl.O.P.(MD) No.13850 of 2022

9. With the above directions, this criminal original petition stands allowed. Consequently, connected miscellaneous petition is closed.

01.08.2022

Internet: Yes
Index: Yes/No
Speaking/Non speaking order
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Crl.O.P.(MD) No.13850 of 2022

V.SIVAGNANAM, J.

lr

To

1.The Additional District and Sessions Judge,
Additional District Court,
Sivagangai.

2.The Sub Inspector of Police,
Sivagangai Taluk Police Station,
Sivagangai.

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

Crl.O.P.(MD) No.13850 of 2022

01.08.2022

8/8