



CrI.O.P.(MD) No.15495 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 21.11.2022

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P (MD) No.15495 of 2022

and

CrI.M.P(MD)No.10179 of 2022

M.Ramasamy

...Petitioner

VS

**The Inspector of Police
Bazaar Police Station,
Virudhunagar**

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to set aside the order passed on 17.06.2022 in Cr.R.P.Nos.8 of 2019 in C.C. No.91 of 2013 on the file of the Additional District Judge, Virudhunagar.

For Petitioner	: Mr.A.Ramesh
For Respondent	: Mr.R.Siva Kumar
	Government Advocate(CrI.Side)

ORDER

This Criminal Original Petition had been filed to to set aside the order passed on 17.06.2022 in Cr.R.P.Nos.8 of 2019 in C.C. No.91 of 2013 on the file of the Additional District Judge, Virudhunagar.



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2. When the case came up for hearing, the learned Counsel for the Petitioner sought short adjournment.

3. The learned Government Advocate(Crl.Side) would submit that this is the case in which petition under Section 311 of Cr.P.C was dismissed. On perusal of the same it is found that initially it was dismissed by the learned Judicial Magistrate No.I, Virudhunagar in Cr.M.P. No.2328 of 2019 in C.C. No.91 of 2013 on 01.07.2019. Subsequently they have preferred a criminal revision before the learned Additional District Judge, Virudhunagar in Crl.R.C. No.8 of 2019 and the same was also dismissed on 17.06.2022. The learned Government Advocate(Crl.Side) invited the attention of this Court to the observation made by the learned Judicial Magistrate No.I, Virudhunagar vide order dated 01.07.2019 in Crmp. No. 2328 of 2019 in CC No.91 of 2013, wherein he had stated that even after 4 ½ years the Petitioner had not taken steps to recall the witnesses P.W. 1,2,6,8 and 9 and this petition has been filed only to protract the proceedings. Hence he seeks to dismiss the petition.



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4. The learned Counsel for the Petitioner would submit that the Petitioner is a sole accused facing charge for the offence under Section 304(A) of IPC and had to be viewed leniently.

5. The learned Additional District Judge, Virudhunagar while dismissing the petition in Criminal Revision in Crl.RC. No.8 of 2019 dated 17.06.2022, has observed as follows:

“On perusal of the orders, it is seen that the revision petitioner is the accused in CC No.91/2013. It is the case of the prosecution that on 07.06.2012 about 7.45 pm., in Virudhunagar – Sattur main road the revision petitioner /accused drove the lorry bearing Reg.No. TN 23 B 2100 in a rash and negligent manner and dashed against the cyclist and caused his death. He is facing trial from the year 2013. In that case, PW.1 Sundaramoorthy and PW.2 Seenivasan were examined on 16.06.2014 and P.W6 Kanagaraj, PW.8, Sankarapandi, PW.9. Lakshmanan were examined on 04.08.2014 and PW.15, Investigating Officer, Elango was examined on 10.12.2018. Those witnesses were not cross examined by the revision petitioner. The reason for non cross examination of those witnesses is state that on the day of examination of witnesses counsel for the Petitioner went to attend a case in Madurai. The learned Judicial Magistrate in his order held that even after 4 ½ years of examination of those witnesses and no sufficient reason was stated by the revision petitioner and dismiss the petition.



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5.The learned Additional Public Prosecutor argued that here it is the practice of the accused that till the witness is win over they did not cross examine them. In this case, if the petition is allowed there is every possibility of winning over the witnesses. As rightly held by the trial Court only after 4 ½ years of examination of those witnesses, this petition was filed. If the above witnesses were given chance to recall for cross-examination , the revision petitioner would take advantage. of the loss of memory of those witnesses and there is every chance for winning over the witness. Hence, the trial Court has rightly dismissed the application. This Court is of the view that there is nothing to interfere with the order of the trial Court. Hence this Court concur with the view of the learned Judicial Magistrate in dismissing the petition filed under Section 311 of Cr.P.C”

6. The C.C. is of the year 2013. The alleged occurrence is said to have taken place in the year 2013, the learned Counsel for the Petitioner relied on the following decisions of the Hon'ble Supreme Court:

a) Rafiq and another .vs. Munshilal and another reported in 1981 AIR 1400

b) Manju Devi .vs. State of Rajasthan and another in Criminal Appeal No.688 of 2019.



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7. The Hon'ble Supreme Court in the reported decision in **2015 (1)**

MLJ (Crl) 288 (SC) [Vinod Kumar -vs- State of Punjab] had directed the trial Courts not to grant adjournments for cross examination of witnesses as it leads to miscarriage of justice by winning over the witnesses by coercion or threat or by derailing fair trial proceedings. This ruling was circulated by the Hon'ble Supreme Court to all the Hon'ble High Courts through out the Country with a direction that it should be circulated to all the trial Judges down the hierarchy up to the level of Judicial Magistrate. Therefore as on today the trial Judges are not permitting the petition under Section 311 of Cr.P.C as there is a possibility of their facing departmental action for violation of direction from the Hon'ble Supreme Court. This Court exercising extra ordinary powers under Section 482 of Cr.P.C cannot distinguish the rulings of the Hon'ble Supreme Court or dilute the rulings.

7. The rulings cited by learned Counsel for the Petitioner is prior to the reported ruling of the Hon'ble Supreme Court in the case of **Vinod Kumar -vs- State of Punjab** which is quoted both by the learned Judicial Magistrate as well as the learned Additional District Judge, Virudhungan.



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8. In the light of the above, this Court exercising extra ordinary powers under Section 482 of Cr.P.C cannot encourage defence to recall witnesses after length of time of 4 ½ years after commencement of trial.

9. In the light of the above, this Court is not inclined to set aside the order passed by the learned Judicial Magistrate in case involved in Section 304(A) of IPC for which witnesses have deposed 4 ½ years prior to the dismissal of the Criminal Miscellaneous Petition.

10. Further the learned Counsel for the Petitioner relied on the decision of the High Court of Allahabad in the case of ***Madhusudan Shukla.vs. State of Uttar Pradesh and Another***, wherein also it has been stated that 311 Cr.P.C petition shall be used sparingly only to meet the ends of justice. Here the learned trial Judge had observed that after the prosecution had completed examination of witnesses 4 ½ years had lapsed for trial in offence under Section 304(A) of IPC to recall the witnesses which is beyond any reason. Therefore the ruling which is cited by the learned Counsel for the Petitioner is also not applicable to the fact of the present case.



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11. The order passed by the learned Additional District Judge, Virudhunagar does not warrant interference. Hence this Criminal Original Petition stands dismissed. Consequently connected miscellaneous petition is closed.

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

1. The Additional District Judge, Virudhunagar
2. The Judicial Magistrate No.I, Virudhunagar
- 3.The Inspector of Police
Bazaar Police Station,
Virudhunagar
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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SATHI KUMAR SUKUMARA KURUP, J.

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