



Crl.O.P.(MD) No.15997 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 20.09.2022

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THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.O.P (MD) No.15997 of 2022

and

Crl.M.P.(MD) Nos.10570 and 10571 of 2022

1.R.Kannan

2.R.Boominathan

3.B.Ramachandran

4.M.Periyakaruppan

...Petitioners

vs

The Sub Inspector of Police
Manamadurai Police Station,
Manamadurai.
Crime No.176 of 2012

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records pertaining to the impugned order dated 11.04.2022 passed in Cr.M.P.No.67 of 2022 in S.T.C.No.1 of 2022 on the file of the learned Judicial Magistrate, Manamadurai and to set aside the same.

For Petitioners : Mr.K.K.Udayakumar



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

ORDER

This Criminal Original Petition has been filed to quash the order made in Cr.M.P.No.67 of 2022 in S.T.C.No.1 of 2022 dated 11.04.2022 on the file of the learned Judicial Magistrate, Manamadurai.

2.It is the contention of the learned Counsel for the Petitioners that the accused were facing charges under Sections 294(b), 427 and 506(i) IPC in STC.No.1 of 2022. In the course of the trial, the prosecution had examined the witnesses, P.W1 to P.W7. The said witnesses were not cross-examined on the same day by the learned Counsel for the accused. Subsequently, the accused had filed Cr.M.P.No.67 of 2022 under Section 311 Cr.P.C., to recall the witnesses, P.W1 to P.W3 and P.W7.

3.The learned Judicial Magistrate, Manamadurai, had dismissed the said petition. Aggrieved by the same, the Petitioners had filed this petition to avoid miscarriage of justice by invoking the extraordinary powers of this Court under Section 482 Cr.P.C. to defend the valuable right of the accused



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to cross-examine the witnesses. Therefore, the learned Counsel for the Petitioners seeks to set aside the order passed by the learned Judicial Magistrate, Manamadurai in Cr.M.P.No.67 of 2022 dated 11.04.2022.

4.The learned Government Advocate (Crl.side) for the Respondent vehemently objected to the submission of the learned Counsel for the Petitioners stating that the prosecution witnesses were available in the Court, when they had deposed the evidence in the presence of the accused, which is considered prerequisite for fair trial. Also, in criminal trials, when the witnesses are available before the Court, the learned Counsel for the accused shall cross-examine them then and there. Here, the learned Counsel for the accused had not cross-examined the witnesses then and there. The witnesses were summoned at the whims and fancies of the accused. It amounts to harassing the witnesses by the accused thereby violating the right of the witnesses, who are also protected by the Constitutional provisions of fair trial.

5.It is the further submission of the learned Government Advocate (Crl.side) that the principles of fair and speedy trial are misused by the



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accused in such a way that the accused conducted the trial at the whims and fancies and harassed the victims of crime as well as the witnesses for the prosecution by summoning them often to the Court. They had done their duty as per law by deposing the evidence. Instead of cross-examining them then and there, the accused chose not to cross-examine. It is clearly stated in the order passed by the learned Judicial Magistrate, Manamadurai dated 11.04.2022, which reads as follows:-

“3. Heard the Learned counsel for the Accused and APP for the prosecution, this Court at the outset wants to mention the provision of Section 309 of Crpc “provided also that (a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of the party; (b) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment; (c) Where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be”. As per the Section 309 Crpc the pleader of a party not present in the Court, shall not be a ground for getting an adjournment for the non examination of the witness present.”

6. After a period of 4 years and 10 months, the said petition had been filed to recall the witnesses, P.W1 to P.W3 and P.W7, which amounts to



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dilatory tactics. Not only that, there is sufficient time for the accused to cross-examine the witnesses, thereby forcing the witnesses to recant from the evidence that they are already deposed, which cannot be accepted under the principle of fair trial. By the method of principle of fair trial, the accused shall not be allowed to hijack the trial proceedings. Therefore, the learned Government Advocate (Crl.side) sought to dismiss this petition as having no merits.

7.The learned Judicial Magistrate, Manamadurai had also cited the ruling of the Hon'ble Supreme Court in the case of ***Vinothkumar Sarma Vs. State of Punjab*** in dismissing the petition. When the learned Judicial Magistrate, Manamadurai, had quoted the ruling of the Hon'ble Supreme Court, which deprecated the practice adopted by the accused in delaying the trial and causing harassment to the witnesses and the victim of the crime, this Court exercising the extraordinary powers under Section 482 Cr.P.C. shall not exercise such powers against the reported ruling of the Hon'ble Supreme Court. Therefore, this petition has no merit and accordingly, it is liable to be dismissed.



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8.On consideration of the submission of the learned Counsel on either side and on perusal of the order passed in Cr.M.P.No.67 of 2022 dated 11.04.2022, this Court had sought remarks from the learned Judicial Magistrate, Manamadurai, wherein the learned Judge had offered his remarks along with 'B' diary extract as proof of the contention that the accused had not cross-examined the witnesses and attempted to recall the witnesses P.W1 to P.W3 and P.W7 after a period of 4 years and 10 months.

9.The conduct of the Petitioners as accused before the trial Court cannot at all be accepted. As rightly pointed out by the learned Government Advocate (CrI.side), the learned Trial Judge, the learned Judicial Magistrate, Manamadurai, had quoted the ruling of the Hon'ble Supreme Court, which deprecated the practice of the accused misusing the right to recall the witnesses under the principle of fair trial and valuable defence of the accused by misusing the provision and harassing the witnesses cannot be accepted.

10.From the records, it is found that it is a Summary Trial Case, which indicates that the case would have been disposed of within the



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reasonable period of 1 or 2 years from the date of taking it on file by the learned Judicial Magistrate. Therefore, the order of the learned Judicial Magistrate, Manamadurai that the Petitioners had filed a petition under Section 311 Cr.P.C. after 4 years and 10 months is found acceptable. The order of the learned Judicial Magistrate, Manamadurai is a well reasoned order. The contention of the learned Counsel for the Petitioners is found to be unreasonable and unacceptable in the principles of fair trial, which is a guaranteed right by the Constitution of India to its citizen, which includes the witnesses and the victim of the crime also. The accused cannot hold the Court under the pretext of “fair trial” by harassing the victim of crime and the prosecution witnesses, who are also the citizens of this country and are also protected by the very same right to fair trial and speedy trial by the Constitution of India. Therefore, the contention of the learned Counsel for the Petitioners cannot at all be accepted, in the light of the reported ruling of the Hon'ble Supreme Court in the case of ***Vinothkumar Sarma Vs. State of Punjab***, which is quoted by the learned Judicial Magistrate, Manamadurai.

11.This Court exercising the extraordinary powers under Section 482 Cr.P.C. cannot set aside the well reasoned order of the learned Judicial



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Magistrate, who had observed that the Petitioners as accused had attempted to recall the witnesses after a period of 4 years and 10 months from the date of their examination before the Court. Therefore, the contention of the learned Counsel for the Petitioners is rejected. The submission of the learned Government Advocate (Crl.side) is accepted.

12.In the result, this Criminal Original Petition is dismissed as having no merit. Consequently, connected Miscellaneous Petitions are closed.

Internet:Yes./No
Index:Yes/No
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20.09.2022

To

- 1.The Judicial Magistrate,
Manamadurai.
- 2.The Sub Inspector of Police
Manamadurai Police Station,
Manamadurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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SATHI KUMAR SUKUMARA KURUP, J.

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