



Crl.O.P.(MD) No.18591 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.10.2022

CORAM

THE HON'BLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

CRL.O.P(MD)No.18591 of 2022

and

Crl.M.P(MD)No.12496 of 2022

M.Palani

...Petitioner

VS

1.The State Rep. by
The Sub Inspector of Police,
Seevalaperi Police Station,
Tirunelveli District.
(Cr.No.94 of 2021)

2.Subramaniyan

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to set aside the evidence of P.W.1 to P.W.5 in S.C.No.528 of 2021 pending on the file of the learned III Additional District and Sessions Judge, Tirunelveli in the light of the order passed by this Court in Crl.R.C(MD)No.848 of 2021, dated 12.09.2022 and consequently, to direct the above said learned Judge to examine the P.W.1 to P.W.5 afresh.

For Petitioner

For R1

For R2

: Mr.R.Anand

: Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

:Mr.R.Karunanidhi



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ORDER

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This Criminal Original Petition has been filed to set aside the evidence of P.W.1 to P.W.5 in S.C.No.528 of 2021 pending on the file of the learned III Additional District and Sessions Judge, Tirunelveli, in the light of the order passed by this Court in Crl.R.C(MD)No.848 of 2021, dated 12.09.2022 and consequently, to direct the learned Judge to examine the P.W.1 to P.W.5 afresh.

2.Heard the learned Counsel for the Petitioner, learned Additional Public Prosecutor appearing for the first Respondent and the learned Counsel for the second Respondent.

3.The learned Counsel for the Petitioner submitted that the murder case arose out of a group clash in Seevalaperi Village between two communities, Yadavar and Thevar. Both communities were worshipping the Sudalaimadan Temple, where, there was a gentleman agreement that within the temple premises, Yadavars can sell eatables and outside the temple premises, only Thevars can sell eatables and other things. During COVID-19 lockdown, the temple was closed. In the year 2021, after COVID-19 restrictions were



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partially raised, three people belonging to Yadavar community sold eatables outside the temple premises, which was objected to by A1 to A4.

4.As per the prosecution case, A1 to A4 in a drunken mood, armed with Aruval brutally attacked Chidambaram, the deceased and the injured, Nataraja Perumal. On seeing this, others also came rushing and prevented further attack. On the way to hospital, Chidambaram died. After registration of FIR, investigation had been completed and final report laid before the Court concerned. Now the case had come up for trial in S.C.No.528 of 2021 on the file of the III Additional District and Sessions Judge, Tirunelveli.

5.As per FIR, there were only six people. Subsequently, due to the pressure tactics played by the relatives of the deceased, 11 more were added as accused. 17 people are now facing trial. The family of the deceased had moved this Court by way of a Writ Petition, thereby, sought appointment of Special Public Prosecutor. As per the order of this Court, Special Public Prosecutor was appointed. Subsequently, at the instance of the Special Public Prosecutor, the S.H.O. of the Police Station concerned, who had to instruct the Special Public Prosecutor,



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had given instruction regarding the motive of the murder, whereby, the documents from the HR & CE Department were sought to be marked. The Special Public Prosecutor had filed Crl.M.P.No.7324 of 2022 under Section 231(1) of Cr.P.C., which was objected by the learned Counsel for the Accused stating that those were not part of the documents given under Section 207 Cr.P.C., and after commencement of the trial, the accused are prejudiced in the principles of fair trial. Ignoring the objection by the learned Counsel for the Accused, the learned III Additional District and Sessions Judge, Tirunelveli, had allowed the Petition.

6. Aggrieved by the same, the accused had moved this Court in Crl.R.C.(MD)No.848 of 2022 and this Court by order, dated 12.09.2022 had partly allowed the same. Before that, the prosecution had already examined upto five witnesses. The witnesses had deposed about the documents that were sought to be marked by the prosecution regarding the document issued by the HR & CE Department, which are not part of the statements already recorded by the Investigation Officer under Section 161 Cr.P.C. Therefore, the learned Counsel for the Accused objected to the same. In spite of the objection of the learned Counsel for the Accused, the learned III



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Additional District and Sessions Judge, Tirunelveli, had recorded the deposition of the witnesses. Aggrieved by the same, A2 had filed this Petition under Section 482 Cr.P.C., seeking to quash the deposition of PW-1 to PW-5.

7.The learned Counsel for the Petitioner invited the attention of this Court to the order passed by the learned Single Judge of this Court in Crl.R.C.(MD)No.848 of 2021. The relevant paragraph of which reads as follows:

"20. The prosecution is permitted to mark the 2 passports given to both the women police constables during investigation and to mark documents regarding Crime Nos.161 of 2018 and 162 of 2018 and CSR.Nos.41 of 2016 and 42 of 2016 and to examine 2 of the erstwhile investigation officers, SI of police, with regard to the above documents. With regard to the examination of the official from the HR & CE Department and with regard to the marking of the documents regarding the temple administration, the petition stands dismissed.

21. With the above modification, this Criminal Revision Case is partly allowed. Consequently, connected Miscellaneous Petitions are closed."

8.Further, he invited the attention of this Court to the deposition of PW-1 to PW-5. Instead of narrating the occurrence, they had given deposition regarding the origin of the motive by attempting to mark the HR & CE documents subsequently. Therefore, he seeks to quash



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the evidence of PW-1 to PW-5, which was recorded before the Crl.R.C., was partly allowed.

9.He further submitted that the order of the learned Single Judge of this Court clearly dismissing the order passed by the learned Sessions Judge by stating that only documents regarding Cr.Nos.161 and 162 of 2018 and marking of passports given to woman Constables during investigation and marking of CSR Nos.41 and 42 of 2016 and to examine erstwhile Investigation Officers with regard to the above documents. With regard to the officials from HR & CE Department and with regard to the marking of documents regarding Temple administration, the Petition stands dismissed. While so, the deposition of PW-1 to PW-5 containing the subject matter of HR & CE Department and attempted marking of documents has to be eschewed (quashed)

10.The learned Additional Public Prosecutor submitted that the witnesses PW-1 to PW-5 had deposed evidence naturally, as per the occurrence and the material objects were marked, which was prior to 207 Cr.P.C., documents, that were granted to the accused. As per 161 Statement, that was already recorded, there is nothing for the



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Petitioner to object regarding deposition of PW-1 to PW-5.

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11.It is the contention of the learned Additional Public Prosecutor that their only intention is to delay the trial. None of the witnesses had been cross examined. It is the further submission of the learned Additional Public Prosecutor that on 02.09.2022, PW-1 and PW-3 were alone examined and 05.09.2022, PW-4 and PW-5 were alone examined. Till 27.10.2022, 16 witnesses had been examined. Till date, the accused had not cross examined any of the witnesses.

12.Also, the learned Additional Public Prosecutor submitted that one of the accused had sought transfer by filing a Petition before this Court, which was also dismissed. Therefore, the learned Additional Public Prosecutor submitted that the appearing Counsel for the Accused can cross examine the witnesses regarding the new facts, that they had stated in their deposition. The accused cannot control the deposition of witnesses or the Court proceedings. Individual witnesses are free to express themselves while deposing as witnesses. They cannot be compelled to shut or restrict either by the Court or by the prosecution or by the accused. They are free to express before the Judge concerned regarding the circumstances and other related



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matters, which are to their own volition natural to their deposition. If the accused feel that those facts were are not earlier stated by Police Officers, they are within their rights under the principles of fair trial to cross examine the witnesses regarding improvisation in their deposition.

13.The learned Counsel for the second Respondent/De-Facto Complainant submitted that this Petition is nothing but ploy adopted by the accused to drag on the proceedings. It is the submission of the learned Counsel for the second Respondent that there is no such gentlemen agreement, as stated by the Petitioner herein between Yadhavars and Thevars regarding the management of the Temple. The Temple is run by the HR & CE Department, but managed by Yadhavars. There had been dispute and skirmishes regarding the same between two groups, which resulted in filing of C.S.R.Nos.41 and 42 of 2016 and registration of FIRs in Cr.Nos.161 and 162 of 2018. Therefore, those are naturally spoken to by the witnesses by their own volition. Also, it is the further submission of the learned Counsel for the second Respondent/De-Facto Complainant that he had filed a Writ Petition for appointment of Special Public Prosecutor, which was allowed. Subsequently, Crl.O.P.(MD)No.12668 of 2022



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was filed. Subsequently, one of the accused, A9 filed Crl.O.P. (MD)No.13097 of 2022 seeking transfer of the case trial from the file of the learned III Additional District and Sessions Judge, Tirunelveli, to any other Court in which, the learned Single Judge of this Court, by order dated 21.07.2022 dismissed the Petition by observing as follows:

"7. A transfer should not readily be granted for any fancied notion of a litigant and it should be granted to ensure that the applicant gets fair and impartial justice. Mere presumption or possible apprehension are not sufficient only good and sufficient grounds may be considered. Further, transfer of the case from one court to another indirectly casts doubt on the competency and integrity of the judge from whom the case is sought to be transferred. Therefore, the apprehension expressed by the learned counsel for the petitioner is not reasonable and every apprehension does not have a ground to transfer the case. It should be a reasonable apprehension. I find no material to substantiate the fear expressed by the petitioner and no merit in the transfer petition."

14.Also, he had relied upon another order passed by this Court in Crl.O.P.(MD)No.10840 of 2022, dated 16.09.2022. The relevant paragraph of which reads as follows:

"6.Considering the rival submissions and on perusal of the order passed by the learned trial Judge, the Chief Judicial Magistrate, Sivagangai, when the Hon'ble Supreme Court had laid down the guidelines in Vinod Kumar's case (cited supra), where the Hon'ble Supreme Court had deprecated the practise of recalling the witnesses at the convenience of the accused, thereby delaying the trial, which is anathema to the Constitutional provisions of speedy trial, particularly in Criminal Cases and is a guaranteed right to the citizen of India by the Constitution of India, the very same provision is taken for granted



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by the accused, who happened to be the citizen of India under the “principle of fair trial”, thereby causing harassment to the witnesses, who are also the citizen of India.

7.The Hon'ble Supreme Court had repeatedly issued the guidelines to the trial Courts not to encourage the dilatory tactics either by the accused or by the Counsels and in the Vinod Kumar's case, the Hon'ble Supreme Court had issued directions to the High Courts to circulate the judgment to each of the trial Judges irrespective of the cadre right from Judicial Magistrate up to District Sessions Judge. Therefore, the trial Judges are aware of the guidelines issued in this landmark judgment. Even after the Supreme Court warning that action will be initiated against the trial Judges for prolonging the trial and encouraging the delaying tactics, the Counsels are ignoring the law laid down by the Hon'ble Supreme Court. As per Article 142, the law laid down by the Hon'ble Supreme Court is law of the land. The trial Judges are bound by the same. When they violate the guidelines, the trial Judges are landing in trouble. Ignoring all these provisions, it is noted that invariably the Petitions are filed before the Trial Court lackadaisically without any reason, which is deprecated by the Hon'ble Supreme Court in the very same Judgment. The reason mentioned by the learned Counsel for the Petitioner cannot at all be accepted when the trial Judge had rejected the Petition in the light of the reported ruling of the Hon'ble Supreme Court in Vinod Kumar's case. Therefore, it is not an appropriate case to invoke Section 482 of Cr.P.C.”

15.On consideration of the rival submissions of the learned Counsel for the Petitioner, the learned Additional Public Prosecutor and the learned Counsel for the second Respondent, the submission of the learned Counsel for the Petitioner is found justified in the light of the order passed by this Court in Crl.R.C.(MD)No.848 of 2022, wherein, it is specifically ordered that the prosecution cannot mark any document regarding HR & CE Department. By the time Crl.R.C., was allowed, already the learned Sessions Judge had proceeded with



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the examination of the prosecution witnesses, PW-1 to PW-5.

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16.That cannot be a sole ground to eschew the entire evidence of PW-1 to PW-5. As rightly pointed out by the learned Additional Public Prosecutor, the Counsels, who representing the Accused, are within their right to cross examine the witnesses regarding the improvements made by them, which were not part of the statements recorded by the Investigation Officer during investigation under Section 161 Cr.P.C. It is pointed by the learned Additional Public Prosecutor that none of the witnesses had been cross examined.

17.In the light of the reported ruling of the Honourable Supreme Court in the case of **Vinoth Kumar vs State of Punjab**, reported in **(2015) 1 MLJ (Crl.) 288 (SC)**, if the accused choose not to cross examine, the Sessions Court cannot recall witnesses mechanically and leniently. Here is a case, where, the Petitioner, A2, had come before this Court that there are facts, which are new, which were not part of the 161 statements. That part of the deposition is found objectionable. Therefore, the learned III Additional District and Sessions Judge, Tirunelveli, is granted the liberty to consider eschew of that portion only after hearing the prosecution and the learned



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Counsel for the Accused either before the cross examination of the witnesses or at the conclusion of the trial. The learned counsel for the Accused can also furnish written arguments regarding the same. It is pointed out that the learned III Additional District and Sessions Judge, Tirunelveli, can, as an exemption, allow the Petitioner and other accused to cross examine the witnesses in this particular case. Within the limited time, if they choose not to cross examine, the III Additional District and Sessions Judge, Tirunelveli, is within his power and discretion, to reject the recall of the witnesses one by one. It should be not be prolonged at the whims and fancies of the appearing Counsels.

18.With the above directions, this Criminal Original Petition is disposed of. Consequently, connected Miscellaneous Petition is closed.

Index:Yes/No

31.10.2022

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To

- 1.The III Additional District and Sessions Judge,
Tirunelveli.
- 2.The Sub Inspector of Police,
Seevalaperi Police Station,
Tirunelveli District.



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SATHI KUMAR SUKUMARA KURUP, J.

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