



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 23.03.2022

CORAM :

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.19491 of 2018
and
Crl.MP(MD)No.8863 of 2018

Selvanayagam

... Petitioner

Vs.

The State rep by
The Inspector of Police,
Kadayalumoodu,
Kanyakumari District.
(Crime No.81 of 2012)

... Respondent

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code, to direct the learned judicial magistrate Court No.1, Kuzhithurai to eschew the evidence of Roosevelt and others who were examined as P.W.1 to P.W.8 in C.C.No.7 of 2013 and for a further direction to the learned Judicial Magistrate Court No.1, Kuzhithurai to conduct a de-nova trial.

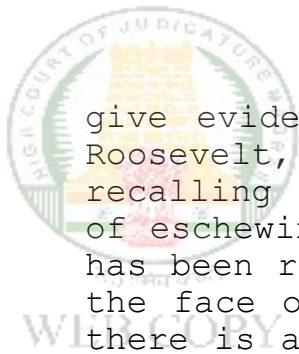
For Petitioner	:	Mr.D.Venkatesh for Mr.M.P.Senthil
For Respondent	:	Mr.SS.Madhavan, Government Advocate (Crl.Side)

O R D E R

This petition is filed seeking direction to direct the learned judicial magistrate Court No.1, Kuzhithurai to eschew the evidence of Roosevelt and others who were examined as P.W.1 to P.W.8 in C.C.No.7 of 2013 and also direct to conduct a de-nova trial.

2.The grievance of the petitioner is that he is the defacto complainant and he was summoned to appear before the Trial Court. But, due to his ill-health, he could not appear before the Trial Court for his examination. But, the Trial Court without minding that, examined one Roosevelt as P.W.1 and recorded his evidence as if he has lodged a complaint. But, actually, the petitioner herein is the defacto complainant.

3.The CD file was also perused. It is seen that the petitioner is the defacto complainant and he has lodged a complaint, upon which, criminal proceedings have been initiated. No doubt, there is a grievance on the part of the petitioner. Still there is a possibility for the petitioner to approach the concerned Court and



give evidence. If there is any wrong evidence on the side of the Roosevelt, the same can be corrected by the Trial Court by recalling him. When such possibilities are available, the question of eschewing the evidence of P.W.1 is not proper. Once the evidence has been recorded, unless there is any mistake or error apparent on the face of record, that cannot be eschewed. As mentioned earlier, there is a mistake on the part of the prosecution in not examining L.W.1/defacto complainant.

4.This petition is disposed of with a direction to the petitioner to appear before the Trial Court on **01.04.2022** and on that date, the Trial Court shall examine the petitioner, as a witness. If any mistake is noted on the part of the prosecution, then that can also be corrected by the concerned Court by following the procedure as noted above. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

dss

To

- 1.The Judicial magistrate No.1,
Kuzhithurai.
- 2.The Inspector of Police,
Kadayalumoodu,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

CrI.O.P. (MD)No.19491 of 2018

and

CrI.MP (MD)No.8863 of 2018

23.03.2022

MGJ(28.03.2022) 2P 4C