



CrI.O.P.(MD) No.20982 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.11.2022

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THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P (MD) No.20982 of 2022

and

CrI.M.P.(MD)No.14665 of 2022

Gunasekaran

...Petitioner

VS

**State represented by
The Inspector of Police
Kottaipattinam Police Station,
Pudukottai District.
(Crime No.8 of 2014)**

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records and set aside the order dated 07.09.2022 passed in Cr.M.P.No.4155 of 2022 in C.C.No.96 of 2015 on the file of the Judicial Magistrate, Aranthangi.

**For Petitioner : Mr.T.Lenin Kumar
For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor**



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ORDER

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This Criminal Original Petition has been filed to set aside the order dated 07.09.2022 passed in Cr.M.P.No.4155 of 2022 in C.C.No.96 of 2015 on the file of the Judicial Magistrate, Aranthangi.

2. It is the submission of the learned Counsel for the Petitioner that PW.7 was cross examined on 23.07.2018. P.W.1 and P.W. 2 were recalled and cross examined on 29.06.2022. After cross examination of P.W.1 and P.W.2 it was found by the learned Counsel for the Petitioner that there had been contradiction regarding the place of recording statement by PW.7 regarding the statement given by P.W.1. Therefore he had filed petition under Section 311 of Cr.P.C to recall P.W. 1 and P.W.2 regarding contradictions found in the cross examination of P.W.7 as per the deposition in the examination in chief. The learned Judicial Magistrate after hearing the learned Counsel for the Petitioner and the learned Assistant Public Prosecutor dismissed the petition in Cr.M.P.No.4155 of 2022 in C.C. No. 96 of 2015 by an order dated 07.09.2022. Aggrieved by the same, the Petitioner is before this Court seeking direction to the learned Judicial Magistrate, Aranthangi to afford him opportunity to recall of P.W. 1 and



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P.W.2 to put up further question in the cross examination regarding the evidence available from the cross examination of P.W 7/Investigation Officer.

3. The learned Additional Public Prosecutor objected the line of argument of the learned Counsel for the Petitioner stating that the learned Judicial Magistrate had clearly mentioned in the order stating that P.W.1 and P.W.2 also cross examined by the learned Counsel for the accused before the trial court. When that being the case, the Petitioner cannot seek recall of P.W.1 and P.W. 2 for further cross examination.

4. On consideration of rival submissions it is found that the order passed by the learned Judicial Magistrate, Aranthangi is a well reasoned order. As per the final report submitted by the prosecution the list witness 1 is examined as P.W. 1 who is invariably defacto complainant in all cases. Accordingly last list witness who is invariably the Investigation Officer in all cases. The prosecution produce witnesses are listed as per their rank in the ascending order. When witnesses are available before the Court it is as per the provisions of the Code of Criminal Procedure and as well as the



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reported ruling of the Hon'ble Supreme Court which is reiterated time and again repeatedly by the Hon'ble Supreme Court that when witnesses are available before trial Court the witnesses shall be cross examined by the learned Counsel appearing for the accused then and there. In the same ruling it is also reiterated by the Hon'ble Supreme Court that it is the duty cast upon the Presiding Officer to conduct proceedings in such a manner that when the witnesses are examined on the same day they shall be cross examined and only on exceptional cases defer cross examination shall be allowed. Invariably in all cases it is found that when witnesses are in Court and deposed on behalf of the prosecution the Counsel appearing for the accused does not proceed with the cross examination and they recall the witness as per their convenience. Here also this the same case where P.W.1 and P.W. 2 were cross examined after recall on 29.06.2022. It is the further submission of the learned Counsel for the Petitioner that originally recall of P.W.1 and P.W.2 was dismissed. Against which the Petitioner had approached this Court in CrI.O.P(MD) No.29106 of 2022 and only on the direction from this Court P.W. 1 and P.W. 2 were recalled and allowed to cross examined on 29.06.2022, whereas PW.7 was already cross examined.



5. Now it is found that in the cross examination of P.W.7 it was found that there are contradictions of recording evidence of P.W. 1 and P.W.2 regarding the place where P.W7 statement was recorded. Therefore he seeks to recall P.W.1 and P.W. 2 to put up question regarding statement recorded by P.W.7. The submission of the learned Counsel for the Petitioner /accused cannot at all be accepted in the light of the rules governing cross examination in criminal cases. Further the learned Counsel for the accused/defence had cross examined the witnesses and the right to cross examination had been exhausted and he cannot recall witnesses at his whims and fancies to put up questions which were not put up earlier. As trial advances there is likelihood of contradiction in cross examination with other witnesses that is why the Investigation Officer as last witness who appeared and he was cross examined. Subsequently only P.W.1 and P.W.2 were cross examined and the same question was put up to them as after thought.

6. Now it is found that in the cross examination of P.W.7 it was found that there are contradictions regarding the evidence of P.W.1 and P.W.2 regarding the place where P.W7 had recorded the statement of P.W.1.



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Therefore he seeks to recall P.W.1 and P.W.2 to put up questions regarding the statement recorded by P.W.7. The submission of the learned Counsel for the Petitioner cannot at all be accepted in the light of the rules governing cross examination.

7. The learned Counsel appearing for the accused before the trial Court cannot seek recall P.W.1 and P.W. 2 once again after having exhausted the right of cross examination. If this petition is allowed it will open up flood gates thereby criminal trial will be derailed. The right to fair trial is the Constitutional guaranteed right to the Citizen of this Country. Therefore evidence are recorded only when the accused is present in Court and in the presence of the accused the witnesses are cross examined immediately after they are examined in chief. If the accused take a chance of recalling witness again it is against the guidelines of the Hon'ble Supreme Court in which case the trial Court's duty is to consider or reject the evidence that is recorded after recalling prosecution witnesses after some time once again by the learned Counsel for the accused as it will cause miscarriage of justice.



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8. In spite of the same, the Petitioner had approached the Court seeking recalling the witnesses. This Court does not want to interfere with the well reasoned order of the learned Judicial Magistrate, Aranthangi in dismissing the petition in Cr.M.P.No.4155 of 2022 in C.C. No.96 of 2015. In the light of the above, circumstances the submission of the learned Counsel for the Petitioner cannot at all be accepted and hence it is rejected.

9. In the result, the Criminal Original Petition stands dismissed. Consequently connected miscellaneous petition is closed.

28.11.2022

Internet: Yes./No

Index: Yes/no

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To

1. The Inspector of Police
Kottaiappattinam Police Station,
Pudukottai District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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SATHI KUMAR SUKUMARA KURUP, J.

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