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Crl.O.P.No.5339 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.CHANDRASEKHARAN**

Crl.O.P.No.5339 of 2023
and Crl.M.P.No.3359 of 2023

Vetrivel

... Petitioner

Vs.

State
Rep. By Inspector of Police,
City Crime Branch
Tiruppur

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 Cr.P.C. praying to set aside the order dated 19.07.2022 made in Crl.M.P.No.452 of 2022 in C.C.No.870 of 2014 on the file of the learned Judicial Magistrate No.I, Tiruppur.

For Petitioner : Mr.A.Swaminathan

For Respondent : Mr.S.Santhosh
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed to set aside the order dated 19.07.2022 made in Crl.M.P.No.452 of 2022 in C.C.No.870 of 2014 on



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the file of the learned Judicial Magistrate No.I, Tiruppur.

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2.The learned counsel for the petitioner submitted that the case in C.C.No.870 of 2014 is pending against the petitioner and other accused. Similarly, there is a civil suit in O.S.No.248 of 2008 was filed by the petitioner against defacto-complainant and others seeking the relief of permanent injunction and that suit was decreed on 22.12.2021. The witnesses in criminal case and civil case are almost the same and therefore the witnesses in criminal case namely P.W.1 to P.W.8 were not examined. Unless they are examined, petitioner will be seriously prejudiced. Therefore, this petition.

3.The learned Government Advocate (Criminal side) opposed this petition on the ground that these witnesses were examined from 2017 to 2021 and none of them was cross-examined. He further submitted that the learned trial Judge rightly dismissed the petition in Crl.M.P.No.452 of 2022 in C.C.No.870 of 2014. Thus, he prayed for confirming the order of the learned trial Judge in Crl.M.P.No.452 of 2022 in C.C.No.870 of 2014.

4.Considered the rival submissions and perused the records.



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5.It is seen from the order of learned Judicial Magistrate No.I, Tiruppur, that P.W.1 to P.W.7 were examined on the following dates:-

P.W.1 – 26.04.2017, P.W.2 – 22.06.2017, P.W.3 – 13.11.2017

P.W.4 and P.W.5 – 27.02.2018, P.W.6 – 23.04.2018,

P.W.7 – 24.09.2018 and P.W.8 – 15.12.2021.

6.These witnesses were not examined on the date when they were examined in chief. The recall petition was filed only in 2022. The learned Judicial Magistrate No.I, Tiruppur, found that no satisfying reasons were given for not cross examining these witnesses and filing the recall petition with huge delay. Drawing inspiration from the judgment of the Hon'ble Supreme Court in ***Vinoth Kumar Vs. State of Punjab***, the learned Judicial Magistrate No.I, Tiruppur, chose to dismiss the petition in Crl.M.P.No.452 of 2022 in C.C.No.870 of 2014..

7.Mainly because civil suit was filed in connection with the same transaction, that will not entitle the petitioner in refusing or neglecting to cross-examine the prosecution witnesses. This Court, though not satisfied with the reasons stated by the petitioner for not cross-examining P.W.1 to P.W.8 and filing the petition with a huge delay, also finds that cross-examination of



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witness in a criminal case is absolutely necessary to find the truth.

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8.In this view of the matter, this Court is of the view that P.W.1 to P.W.8 may ordered to be recalled for the purpose of cross-examination on payment of costs. Accordingly, this Court set aside the order dated 19.07.2022, in Crl.M.P.No.452 of 2022 in C.C.No.870 of 2014 passed by the learned Judicial Magistrate No.I, Tiruppur and allows this Criminal Original Petition for recalling P.W.1 to P.W.8 on payment of costs of Rs.5,000/- to each witnesses through Court. On such payment, the learned Judicial Magistrate No.I, Tiruppur, may summon the witnesses for the purpose of cross-examination. The cross-examination should be completed on the date of the appearance of the witnesses, failing which the petitioner will lose the opportunity of cross-examination of the witnesses.

9.With the above direction and observation, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

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Internet: Yes

Index: Yes/No

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To:

1. Inspector of Police,
City Crime Branch
Tiruppur

2. The Public Prosecutor,
High Court of Madras.



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G.CHANDRASEKHARAN, J.
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