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Crl.O.P.No.5416 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.5416 of 2023

&

Crl.M.P.No.3407 of 2023

1.Vasu @ Vasudevan
2.Meena

...Petitioners

Vs.

State Rep. by
The Inspector of Police,
Vallathi Station,
Crime No.308/2008.

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records pertaining to the order dated 16.12.2022 in Crl.M.P.No.44 of 2022 in S.C.No.18 of 2013 passed by the Hon'ble Assistant Session Court, Gingee and set aside the same.

For Petitioners : Mr.M.Gnanasekar

For Respondent : Mr.S.Santhosh

Government Advocate (Crl. Side)



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ORDER

This Criminal Original Petition has been filed to call for the records pertaining to the order dated 16.12.2022 in Crl.M.P.No.44 of 2022 in S.C.No.18 of 2013 passed by the learned Assistant Session Court, Gingee and to set aside the same.

2. Learned counsel for the petitioner submitted that PW14 was examined in chief examination on 05.01.2021 and petitioner counsel could not cross examine him on 05.01.2021. Therefore, petition under Section 311 Cr.P.C. was filed in Crl.M.P.No.16 of 2021 on the file of the Assistant Session Court, Gingee for recall of PW14 and that was allowed on 01.02.2021. When the matter was posted on 04.03.2022 for cross examination of PW14, petitioner counsel was selected as ward member and he had to attend the elections for the post of Chairman and Vice-Chairman and therefore, PW14 could not be cross examined on 04.03.2022. Then, Crl.M.P.No.44 of 2022 in S.C.No.18 of 2013 was filed for recall of PW14 and that was dismissed and challenging the said order, this petition.

3. In response, learned Government Advocate (Crl.Side) submitted that trial in this case is over and the case is pending for arguments.



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4. Considered the rival submissions and perused the records. It is seen from the order of the learned Assistant Session Judge, Gingee, the learned Judge had extensively described as to what had happened after examination of PW14 in chief. PW14 was not cross examined on the date of his chief examination on 05.01.2021. Thereafter, petition filed under Section 311 of Cr.P.C. in Crl.M.P.No.16 of 2021 on the file of the Assistant Session Court, Gingee though allowed, petitioner counsel did not cross examine PW14 on 04.03.2022. Though, this court does not find fault with the dismissal of the 311 Cr.P.C. petition in Crl.M.P.No.44 of 2022 in S.C.No.18 of 2013 on the file of the learned Assistant Session Judge, Gingee, still is of the view that, cross examination of the investigating officer is absolutely necessary in criminal trial, else the accused would be seriously prejudiced.

5. In order to give an opportunity to the petitioner, this Court is of the view that, this petition may be allowed on certain conditions.

6. Accordingly, this petition is allowed on payment of cost of Rs.10,000/-(Rupees Ten Thousand only) to the PW14 through Court. On such payment, learned Assistant Session Judge, Gingee is directed to summon PW14 for the purpose of cross examination. The cross examination should be completed on the same day when the PW14 appears before the court, failing to



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cross examine, the accused will lose his opportunity to cross examine PW14.

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7. With the above directions, this Criminal Original petition is allowed.

Consequently, connected miscellaneous petition is closed.

09.03.2023

Index : Yes / No

Internet : Yes / No

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To

- 1.The Inspector of Police,
Vallathi Statio.
2. The Public Prosecutor,
High Court of Madras.



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G.CHANDRASEKHARAN,J.

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