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Crl.O.P.No.6920 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.03.2023

PRONOUNCED ON : 25.04.2023

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.6920 of 2023

and

Crl.M.P.No.4361 of 2023

Dharani Senthil @ M.Senthil Kumar

...

Petitioner

Vs.

State by:

Inspector of Police,
Central Crime Branch,
Tiruppur.

...

Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for records and set aside the order passed by the learned Judicial Magistrate No.II, Tiruppur District (viz., to recall of PWs 1, 3 to 13 and dismissed) in Crl.M.P.No.2907 of 2023 dated 15.03.2023 in C.C.No.462 of 2004.

For Petitioner : Mr.A.Nagarajan
For Respondent : Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl.Side)



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ORDER

This Criminal Original Petition has been filed to call for the records and set aside the order dated 15.03.2023, passed by the learned Judicial Magistrate No.II, Tiruppur District, in Crl.M.P.No.2907 of 2023 in C.C.No.462 of 2004.

2.The learned counsel for the petitioner submitted that petitioner filed Crl.M.P.No.2907 of 2023 in C.C.No.462 of 2004 for recall of PWs 1, 3 to 13. The reason is that petitioner came to know about the production of two cheques issued by other banks, only when PW2 was cross examined on 06.03.2023, especially, when the Court permitted the petitioner to peruse the documents filed in the case. Petitioner was not supplied with the copies of all the documents and not permitted to peruse all the documents. When the cheque issued by the other bank is produced and cleared, it is known as “against clearance”. This aspect has to be clarified by recalling PWs 1, 3 to 13. However, this petition came to be dismissed by the learned Judicial Magistrate No.II, Tiruppur District. Unless the petitioner is permitted to cross examine these witnesses, petitioner would be seriously prejudiced.



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3.The learned Government Advocate (Crl.Side) opposed this petition on the ground that PWs 1, 3 to 13 were not cross examined earlier. On the petition filed by the accused, they were recalled and cross examined by the accused. There was a direction to dispose of this case within a period of two months by this Court. PWs 14 to 17 were also examined. The claim that petitioner was not furnished with the copies of all the documents is not correct. The reason stated by the petitioner for recalling of these witnesses cannot be accepted. When these witnesses had already been cross examined by some of the accused, petition filed again for recall of these witnesses would not be in the interest of justice. Therefore, the learned Judicial Magistrate No.II, rightly dismissed the petition.

4.Considered the rival submissions and perused the records.

5.It is seen from the copy of the deposition of PWs 1 to 14 that PW1 was examined in chief from 19.04.2017 to 05.04.2018. He was recalled on the petition filed by petitioner and cross examined on 20.11.2019 & 23.02.2023. PW2 was examined in chief on 31.05.2018 and cross examined by the petitioner on 06.03.2023. PW3 was examined in chief on 05.10.2018,



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but not cross examined by petitioner. PW4 was examined in chief on 15.11.2018, but not cross examined by petitioner. PW5 was examined in chief on 06.12.2018, but not cross examined by petitioner. PW6 was examined in chief on 13.12.2018, but not cross examined by petitioner. PWs 7, 8 & 9 were examined in chief on 13.12.2018, but not cross examined by petitioner. PW10 was examined in chief on 27.12.2018 and cross examined by petitioner on 20.11.2019. PW11 was examined in chief on 27.12.2018, but not cross examined by petitioner. PW12 was examined in chief on 20.06.2019, but not cross examined by petitioner. PW13 was examined in chief on 05.07.2019, but not cross examined by petitioner.

6.This Court finds that the dismissal of the petition filed for recall of the witnesses cannot be considered as not correct. However, in a criminal case, cross examination of witnesses is absolutely necessary for taking a correct decision. As already indicated, PWs 3 to 9, 11, 12 & 13 had not been cross examined by petitioner. In order to give the petitioner an opportunity to cross examine these witnesses, this Court is of the view that PWs 3 to 9 and 11 to 13 can be ordered to be recalled for the purpose of cross examination subject to payment of costs.



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7.In such view of the matter, the order of the learned Judicial Magistrate No.II, Tiruppur District, is modified to the effect that petitioner shall be permitted to recall PWs 3 to 9 and 11 to 13 on payment of costs Rs.1,000/- each to PWs 3 to 9 and 11 to 13. On such payment through Court, learned Judicial Magistrate No.II, Tiruppur District is directed to recall PWs 3 to 9 and 11 to 13 for the purpose of cross-examination. On the date of their appearance for the purpose of cross-examination, petitioner should cross-examine the witnesses and complete the cross examination on the same day.

8.Accordingly, this Criminal Original Petition is allowed in part.
Consequently, connected miscellaneous petition is also closed.

sli
Internet:Yes
Index:Yes/No
Speaking/Non speaking order

25.04.2023

To:
1.The Judicial Magistrate No.II,
Tiruppur District.

2.The Inspector of Police,
Central Crime Branch,
Tiruppur.

3.The Public Prosecutor,
High Court of Madras.



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G.CHANDRASEKHARAN, J.
sli

Pre-delivery Order in
Crl.O.P.No.6920 of 2023
and
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