



CrI.O.P.No.10216 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.06.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

CrI.O.P.No.10216 of 2021

and

CrI.M.P.No.6166 of 2021

Periyasamy

... Petitioner

Vs.

The State rep. by:

The Inspector of Police

CCIW, Salem

(Cr.No.01/2005)

... Respondent

PRAYER : Criminal Original Petition has been filed under Section 482 of the Criminal Procedure Code, to set aside the order dated 02.02.2021 made in Cr.M.P.No.4261 of 2019 in C.C.No.07 of 2008 on the file of Judicial Magistrate No.IV, Salem.



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For Petitioner : Mr.R.Marudhachalamurthy

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

ORDER

The petition challenges the order passed by the learned Judicial Magistrate No.IV, Salem under Section 311 Cr.P.C. The said petition was filed by the prosecution to examine a witness and to mark a few documents through him. The learned Judicial Magistrate No. IV, Salem had allowed the petition filed by the prosecution.

2. Aggrieved by the said order, the petitioner who is an accused has preferred the above Criminal Original Petition to set-aside the order on the ground that the prosecution had originally not cited, the said person as witness in the final report; and the said petition was filed belatedly and the right of the accused for speedy trial has been violated in the guise of this petition.

3. The learned counsel submitted that though there was no stay of this Court, the respondent had not produced the said witness before the



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trial Court for the past two years. The learned counsel therefore submitted that the order recalling the said witness has to be set-aside.

4. Mr.S.Balaji, the learned Government Advocate (Crl.Side) submitted that said person could not cited as witness in the final report due to oversight and his examination is essential for placing the truth before the Court.

5. Considering the submission made by the learned counsel for the petitioner and the learned Government Advocate (Crl.Side), this Court is of the view that there is no infirmity in the impugned order. However, this Court finds that the prosecution had not examined the witness though this Court had not stayed the proceedings. In order to avoid further delay, this Court deems it appropriate to direct the respondent to examine the witness sought to be summoned on or before the next hearing date i.e., on 21.07.2023. If the prosecution seeks to file an advance hearing petition due notice shall be given to the petitioner. If the respondent/prosecution fails to examine the witness within the above stipulated time, the order passed by the learned Judicial Magistrate No.IV, Salem summoning the witness shall stand cancelled.



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6. With the above observations, this Criminal Original Petition is disposed of. Consequently, the connected miscellaneous petition is closed.

09.06.2023

dk

Index : Yes/No

Speaking/Non Speaking Order

NCC: Yes/No

To

1.The Judicial Magistrate No.IV

Salem.

2.The Public Prosecutor

High Court of Madras

Chennai – 600 104.

SUNDER MOHAN. J,

dk



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