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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 08/02/2023

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The Hon'ble Mr.Justice **G.ILANGOVAN**

CrI.RC(MD)No.134 of 2023

and

CrI.MP(MD)No.1951 of 2023

1.M.Sekar

2.S.Murugesan

: Petitioners/A9 and A11

Vs.

1.The State rep., by
the Sub Inspector of Police,
Seevalaperi Police Station,
Tirunelveli District.

2.Subramanian

(R2 is suo-motu impleaded as per
the order of this court,
dated 03/02/2023 made in

CrI.RC(MD)No.134 of 2023): Respondents/Complainants

Prayer:- This Criminal Revision has been filed under section 397 and 401 of the Criminal Procedure Code, to call for the entire records pertaining to the order passed by the III Additional District Sessions Judge, Tirunelveli on the petition in CrI.MP No.11671 of 2022 in SC No.528 of 2021, vide order, dated 22.12.2022 and consequently, direct the aforesaid Judge to eschew the offending portion of evidence recorded in chief examination of PW1 to PW3 referred to in the said petition SC No.528 of 2021 pending on the file of the learned Judge before the cross examination of the prosecution witnesses.



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2

For Petitioner : Mr.R.Anand

For Respondent : Mr.B.Nambiselvan

O R D E R

This criminal revision has been filed against the order passed by the III Additional District Sessions Judge, Tirunelveli on the petition in CrI.MP No.11671 of 2022 in SC No.528 of 2021, dated 22.12.2022 and consequently, to direct the aforesaid Judge to eschew the offending portion of evidence recorded in chief examination of PW1 to PW3 referred to in the said petition SC No.528 of 2021 pending on the file of the learned Judge before the cross examination of the prosecution witnesses.

2.The facts in brief;-

The petitioners are A9 and A11 in SC No.528 of 2021. They are facing the charges for the offences punishable under sections 120(B), 147, 148, 294(b), 109, 302, 397 and 506(ii) IPC. After framing of the charges, the trial went on and as per the information furnished by the trial court, so far 20 witnesses have been examined by the prosecution in chief and none of them have been



cross examined. During the course of the above said process, several proceedings have been initiated by the accused. First one is CrI.RC(MD)No.848 of 2022, challenging the order that was passed by the trial court in CrI.MP No.7324 of 2022. That petition was filed under section 231 Cr.P.C, seeking permission of this court to mark 9 documents and 4 witnesses as additional oral and documentary evidence. That was allowed by the trial court. Against which, the above said revision has been preferred. That revision was dismissed by this court, on 12/09/2022 permitting the prosecution to mark two documents and examine two witnesses. In respect of other documents, the order passed by the trial court was set aside.

3. Another proceeding was initiated by the accused in Cr.OP(MD)No.18591 of 2022, seeking the relief to set aside the evidence of PW1 to PW5, in the light of the order passed in CrI.RC(MD)No.848 of 2022 and directing the trial Judge to examine PW1 and PW5 afresh. In the above said petition, the grievance expressed by the accused is that before the disposal of CrI.RC(MD)No.848 of 2022, the prosecution examined five witnesses and they



4. Another application was moved by the accused in Cr.MP No.11671 of 2022 in SC No.528 of 2021 seeking an order to eschew a portion of the evidence of PW1 to PW3 on the ground that during the course of evidence due to the force and compulsion by the Public Prosecutor, PW1 to PW3 deposed certain facts, which do find place in the statement recorded under section 161 Cr.P.C and further examination of chief was also undertaken. So that petition was dismissed by the trial court. Against which, this revision has been preferred.

5. Heard both sides.

6. Totally I am unable to understand the grievance that is expressed by the petitioners. As mentioned in the preamble portion, option was given to the trial court to exercise the power, either before cross examination of the witness, to decide whether eschew the evidence or not, which was found to be objected by the petitioners or at the conclusion of the trial.

7. When the learned counsel appearing for the petitioners made argument, this court expressed its view



to the effect that since option was given to the trial court, and the trial court has chosen to exercise the power at the conclusion of the trial, what sort of grievance that can be expressed by him.

8.To this point, the learned counsel appearing for the petitioners would submit that without going into the merits of the above said petition, the trial court has passed the above said order; They cannot wait till the cross examination is over. Because if the portion sought to be eschewed is allowed to be exist on record, that will create unnecessary trouble and also cause prejudice to them. But I am unable to agree with this line of argument.

9.When the trial court has chosen to examine the above said issue, in the light of the power or option given to it, no grievance can be expressed by the petitioners. They have to wait till the final stage.

10.Another aspect is that even reading of the order shows that it is only an interlocutory order, against which, no revision will lie. On that point also, the revision is not entertainable.



11.The learned counsel appearing for the petitioners would submit that the conclusion, that has been reached by the trial court, based upon three reasons, which are not at all correct. But I am not going to that issue, whether the reason assigned by the trial court in dismissing the petition is correct or not. But as mentioned earlier, the only option that is available to the petitioners is that they have to wait till the conclusion of the trial process. Before that, they cannot express any grievance by repeatedly approaching this court. The trial court must go to its logical conclusion, of course with the above said power given to the trial court. Absolutely, I find no merit in this revision.

12.At the time of final argument, the learned counsel appearing for the petitioners would submit that matter can be remitted back to the trial court by setting aside the order of dismissal, to dispose the petition on merits. But I am afraid that whether such course is available to this court. As mentioned above, the Coordinate Bench of this court thought it fit to direct the trial court to exercise the option at its discretion. As mentioned earlier, the grievance of the petitioner is



that before cross examination is undertaken, the eschew of evidence must be decided by the trial court. If such course is adopted by this court, it will amount to review the order, that was passed by the Coordinate Bench of this court, which is not permissible. So, this request is also rejected.

13.In the result, the criminal revision is **dismissed**. Consequently, connected Miscellaneous Petition is closed.

08/02/2023

Index:Yes/No
Internet:Yes/No
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To,

- 1.The III Additional District & Sessions Judge,
Tirunelveli.
- 2.The Sub Inspector of Police,
Seevalaperi Police Station,
Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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9

G . ILANGO VAN , J

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Cr1.RC(MD)No.134 of 2023

08/02/2023



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