



Crl.O.P.(MD)No.2035 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.02.2023**

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.2035 of 2023

and

Crl.M.P.(MD)No.1781 of 2023

1.Senthilkumar

2.Mariyayee

... Petitioners

Vs.

State represented by its
The Inspector of Police,
All Women Police Station,
Thirumayam,
Pudukottai District.
(Crime No.03 of 2016)

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to allow the above criminal original petition by setting aside the order dated 19.12.2022 passed in Cr.M.P.No.6411 of 2022 in C.C.No.105 of 2016 on the file of District Munsif cum Judicial Magistrate, Thirumayam, Pudukottai District.

For Petitioners : Mr.S.Alagu Sundar

For Respondent : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor



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ORDER

This Criminal Original Petition filed, under Section 482 Cr.P.C., is directed against the order passed in Crl.M.P.No.6411 of 2022 in C.C.No. 105 of 2016, dated 19.12.2022, on the file of the District Munsif cum Judicial Magistrate, Thirumayam.

2. The petitioners are the accused 1 and 2 in C.C.No.105 of 2016 on the file of the District Munsif cum Judicial Magistrate, Thirumayam and are charged for the offences under Sections 294(b), 323, 498(A), 406 and 506(1) IPC.

3. It is not in dispute that the petitioners have filed a petition under Section 311 Cr.P.C., seeking permission to recall P.W.1 to P.W.7 for cross examination.

4. The petitioners' case is that when the witnesses P.W.1 to P.W.7 were examined, due to compromise talk, the petitioners assumed that the matter will be settled amicably and hence, the above said witnesses were



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not cross examined, that thereafter no compromise reached between the accused and the defacto complainant and that therefore, the petitioners were constrained to file the above petition under Section 311 Cr.P.C.

5. No doubt, the respondent has raised serious objections for allowing the said petition. The learned Magistrate, after enquiry, has passed the impugned order, dated 19.12.2022 dismissing the said petition. Aggrieved by the said dismissal order, the accused have come forward with the present petition invoking Section 482 Cr.P.C. for setting aside the impugned order.

6. It is not in dispute that P.W.1 and P.W.2 were examined in Chief on 28.09.2022. The learned trial Judge, by observing that the case is pending for more than seven years, that the first accused was long absconding and evaded to receive the summons, for which, Non-Bailable Warrant was issued against the first accused and the same was recalled on 12.09.2022, after six years and this clearly shows that the first accused is not willing to proceed with this case and that when the case stands posted for defense side evidence, the accused filed the petition to recall the witnesses in order to drag on the proceedings, has come to a



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decision, that the petitioners are not entitled to get the relief and dismissed the petition. The learned trial Judge has rightly quoted the judgments of Hon'ble Supreme Court in *State (NCT of Delhi) Vs. Shiv Kumar Yadav* reported in (2016) 2 SCC 402, *State of Haryana Vs. Ram Mehar and others* reported in (2016) 8 Supreme Court Cases 762, *Hanuman Ram Vs. State of Rajasthan* reported in (2008) 3 SCC 602 and *Vinod Kumar Vs. State of Punjab*.

7. In the case on hand, as rightly observed by the learned trial Judge that P.W.1 and P.W.2 were examined in Chief on 28.09.2022, but they were not cross examined on that day, as the accused were not ready to cross examine the witnesses.

8. As rightly contended by the learned counsel appearing for the petitioners, in the case on hand, the above petition was not filed for the purpose of further cross examination, but for cross examination itself. Considering the facts and circumstances of the case and also the fact that the witnesses sought to be recalled were not at all cross examined and also taking note of the fact that the petitioners are facing trial for the offences under Sections 498(A) and 406 IPC, this Court is of the clear



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view that the petitioners should be given one more opportunity to cross examine the witnesses. But at the same time, this Court is of the further view that the petitioners must be mulcted with costs and with further condition that the petitioners/accused, should cross examine the witnesses on the day, when the witnesses are produced before the Court and if for any reason, the petitioners fails to cross examine the said witnesses on that particular day, then they will forfeit their rights to cross examine them.

9. In the result, the Criminal Original Petition is allowed and the impugned order, dated 19.12.2022 in Crl.M.P.No.6411 of 2022 in C.C.No.105 of 2016 on the file of the District Munsif cum Judicial Magistrate, Thirumayam, is set aside and the petition to recall the witnesses is allowed on payment of cost of **Rs.25,000/- (Rupees Twenty Five Thousand Only)** to the credit of Government of Tamil Nadu, CMPRF in IOB, Secretariat Branch, Chennai-9 (Account No.11720 10000 00070, IFSC Code: IOBA0001172) and on payment of process fee and batta to the said witnesses and on further condition that the petitioners side should cross examine the witnesses whenever the



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witnesses are produced before the Court and in case of the petitioners' failure to cross examine the particular witnesses, then they will forfeit their rights to cross examine the witnesses. The trial Court is directed to summon the said witnesses for the purpose of cross examination and complete the examination of the said witnesses within one month from the date of receipt of copy of this order. Consequently, connected Miscellaneous Petition is closed.

10.02.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The District Munsif cum Judicial Magistrate,
Thirumayam.
- 2.The Inspector of Police,
All Women Police Station,
Thirumayam,
Pudukottai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

csn

Order made in
CrI.O.P.(MD)No.2035 of 2023
and
CrI.M.P.(MD)No.1781 of 2023

Dated: 10.02.2023