



Crl.O.P(MD)No.2532 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.01.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

Crl.O.P(MD)No.2532 of 2020

and

Crl.M.P(MD)No.1317 of 2020

1.P.S.Syed Sulthan Ibrahim
2.D.Abdul Sait
3.N.Langathana Banu
4.S.Rahamedjisha Begum

... Petitioners/
Accused Nos.1, 3 to 5

Vs.

The Inspector of Police,
The Commercial Crime Investigation Wing (C.C.I.W),
Theni.
(Crime No.1 of 2004)

... Respondent/
Complainant

*(Amended as per order of this Court, dated 09.04.2021,
in Crl.M.P(MD)No.2965 of 2021 in Crl.O.P(MD)No.
2532 of 2020)*

PRAYER: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records pertaining to the order passed in Cr.M.P.No.3073 of 2019 in C.C.No.138 of 2008, dated 21.11.2019 on the file of the Judicial Magistrate No.III, (CCIW), Madurai and set aside the same.



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For Petitioners : M/s.S.Saravanakumar
For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

ORDER

The petitioners have challenged the dismissal of their petition filed under Section 311 of Cr.P.C.

2. The learned Counsel for the petitioners submitted that P.W.2 was not cross-examined by their earlier counsel. Subsequently, on the advise of their Counsel, they have filed this 311 application to elicit certain vital information from P.W.2. The learned Judicial Magistrate had dismissed the petition, stating that the Counsel reported no cross-examination when P.W.2 was examined and he had not filed any defer petition. The learned Judicial Magistrate therefore felt that since opportunity to cross-examination was already afforded to the petitioners, their petition is liable to be dismissed. The learned Counsel for the petitioners submitted that they may be afforded one more opportunity, since earlier Counsel had not cross-examined the witness and their right of fair trial cannot be defeated due to the inaction of the earlier Counsel.



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3. The learned Additional Public Prosecutor for the respondent submitted that the sufficient opportunity was given to the petitioners and the case is of the year 2008. The petitioners have filed this petition only to delay the progress of the trial. It is well settled that cross-examination has to be done immediately and the petitioners can have no excuse for not doing so and therefore he prayed for dismissal of the petition.

4. I have carefully considered the rival submissions made on either side.

5. This Court is of the view that though the petitioners were afforded sufficient opportunity to cross-examine P.W.2 in the interest of justice and fair trial and for the reasons stated in the petition one more opportunity may be given with a condition that they examine the witness within a stipulated period. If the petitioners fail to cross-examine the witness within the stipulated time, they would lose their right to cross-examine the witness.



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6. The order of the learned Judicial Magistrate No.III (CCIW), Madurai, dated 21.11.2019, is set aside. The petitioners are permitted to recall and cross-examine P.W.2, namely, M.Periyakaruppan. The petitioners shall complete the process of cross-examination within a period of four (4) weeks from the date of receipt of the copy of this order, failing which this order would stand cancelled automatically.

7. With the above said observation, this Criminal Original Petition stands allowed. Consequently, connected Miscellaneous Petition stands closed.

05.01.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Btr

To

1.The Inspector of Police,
The Commercial Crime Investigation Wing (C.C.I.W),
Theni.

2. The Judicial Magistrate No.III (CCIW),
Madurai.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

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