



Crl.O.P(MD).No.4723 of 2020 and 4991 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 13.07.2023

Delivered On : 25.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl.O.P(MD).Nos.4723 and 4991 of 2020

and

Crl.M.P.(MD)Nos.2701 and 2879 of 2020

- 1.Micheal Ammal
- 2.Carmel Lurthu Bai
- 3.Irudhaya Dhasan
- 4.Varuvelammal
- 5.Mari Jansi Rani
- 6.Annammal
- 7.Johnson

...Petitioners in both Crl.O.Ps.

Vs

The State rep. by,
The Inspector of Police,
District Crime Branch,
Nagercoil.
(Crime No.50 of 2010)

...Respondent in both Crl.O.Ps.

PRAYER in Crl.O.P.(MD)No.4723 of 2020 : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, praying this Court to set aside the orders in Crl.M.P.No.1136 of 2020 dated 17.02.2020 on the file of the Judicial Magistrate No.I, Nagercoil and direct the Court below to recall P.W.1 to P.W.16 for cross examination.

PRAYER in Crl.O.P.(MD)No.4991 of 2020 : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, praying this Court



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Sections 420, 465, 468 and 471 of IPC and the same was taken cognizance by the learned Judicial Magistrate No.II, Nagercoil and taken on file as C.C.No.

154 of 2011 and then on 13.06.2012, trial was commenced and P.W.1 was examined and thereafter, P.W.2 and P.W.3 were examined on 26.08.2015 and P.W.4 and P.W.6 were examined on 14.10.2015. P.W.7 and P.W.8 were examined on 04.11.2015. P.W.9 to P.W.12 were examined on 09.12.2015. P.W.13 was examined on 30.12.2015. P.W.14 to P.W.16 were examined on 16.11.2016. P.W.17 was examined on 07.08.2019 and on 14.02.2020, P.W.18 was examined. The defacto complainant and the petitioners are close relatives and the present case is an outcome of a civil dispute with regard to the ancestral properties. From the very beginning, the relatives and friends attempted to compromise the matter amicably and various rounds of compromise talks were held. In the interest of an amicable settlement, the prosecution witness were not cross examined, when they were examined in Chief. The petitioners filed petitions in Crl.M.P.Nos.1136 and 1499 of 2020 to recall the witnesses P.W.1 to P.W.18 and the same were dismissed by the learned Judicial Magistrate on 17.02.2020. The non examination of the witnesses was neither willful nor wanton, but only with the interest of settlement between the parties. Therefore, the learned Judicial Magistrate in the orders dated 17.02.2020, observed that already sufficient opportunity was given to the petitioners but they did not utilise the opportunities and thereby



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the learned Judicial Magistrate dismissed the petition and the same is liable to be set aside.

4.The learned counsel appearing for the petitioners would contend that since the present case is an outcome of a civil dispute with regard to the ancestral properties, they were awaiting of compromise between the parties and the relatives are also attempted to compromise the matter amicably and thereby, there are waiting for amicable settlement and not cross examined the witnesses. The offence are also grave in nature and without cross examination, the case cannot be disposed of. One opportunity can be given to the petitioners.

5.The learned Additional Public Prosecutor appearing for the respondent would contend that already ample chances were given to the petitioners and P.W.1 was examined in the year 2012. P.W.18 was examined in the year 2020. During that period, the petitioners have not taken any steps. The reasons stated that they are waiting for amicable settlement of compromise between the parties, which is not a reasonable ground to set aside the orders. The learned Magistrate has rightly dismissed the petitions and thereby the petition is liable to be dismissed.



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6.This Court heard both sides and perused the materials available on
WEB record.

7.On perusal of the records, it is observed that the petitioners have filed two petitions before the trial Court to recall the witnesses P.W.1 to P.W.18. But the trial Court dismissed the petitions by observing that the case is pending from the year 2012 and the petitioners have not taken any steps to cross examination of the witnesses and the reasons stated by the petitioners that they are waiting for the compromise between the parties is not a valid ground and dismissed the applications. It is admitted fact that P.W.1 was examined as early as in the year 2012 and thereafter, on periodically the other witnesses were examined on various dates. Lastly P.W.18 was examined on 04.02.2020. The reasons stated by the petitioners that they are awaiting for the compromise and the compromise talk was also held between the parties through elders and the relatives but the above said talks were ended in vain and thereafter, they filed these applications. Though the delay is for more than eight years, so far none of the witnesses were examined on the side of the petitioners. The offences are grave in nature.

8.The learned counsel appearing for the petitioners submitted the judgment in *Manju Devi vs. State of Rajasthan and another in Criminal*

<https://www.mhc.tn.gov.in/judis>



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Appeal No.688 of 2019, wherein the Hon'ble Supreme Court held in

paragraph no.9.1 reads as follows:

“9.1. It needs hardly any emphasis that the discretionary powers like those under [Section 311](#) CrPC are essentially intended to ensure that every necessary and appropriate measure is taken by the Court to keep the record straight and to clear any ambiguity in so far as the evidence is concerned as also to ensure that no prejudice is caused to anyone. The principles underlying [Section 311](#) CrPC and amplitude of the powers of the Court thereunder have been explained by this Court in several decisions 1. In [Natasha Singh v. CBI \(State\)](#) : (2013) 5 SCC 741, though the application for examination of witnesses was filed by the accused but, on the principles relating to the exercise of powers under [Section 311](#), this Court observed, inter alia, as under:-

" 8. [Section 311](#) CrPC empowers the court to summon a material witness, or to examine a person present at “any stage” of “any enquiry”, or “trial”, or “any other proceedings” under [CrPC](#), or to summon any person as a witness, or to recall and re-examine any person who has already been examined if his evidence appears to it, to be essential to the arrival of a just decision of the case. Undoubtedly, the [CrPC](#) has conferred a very wide discretionary power upon the court in this respect, but such a discretion is to be exercised judiciously and not arbitrarily. The power of the court in this context is very wide, and in exercise of the same, it may summon any person as a witness at any stage of the trial, or other proceedings. The court is competent to exercise such power even suo motu if no such application has been filed by either of the parties. However, the court must satisfy itself, that it was in fact essential to examine such a witness, or to recall him for further examination in order to arrive at a just decision of the case.

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1 Vide Mohanlal Shamji Soni v. Union of India: 1991 Supp (1) SCC 271, Zahira Habibulla H.

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Sheikh v. State of Gujarat: (2004) 4 SCC 158, Mina Lalita Baruwa v. State of Orissa and Others: (2013) 16 SCC 173 and Rajaram Prasad Yadav v. State of Bihar and Ors: 2013 (14) SCC 461 and Natasha Singh v. CBI (State) : 2013 (5) SCC 741.

15. The scope and object of the provision is to enable the court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under [Section 311](#) CrPC must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. The power conferred under [Section 311](#) CrPC must therefore, be invoked by the court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection. The very use of words such as "any Court", "at any stage", or "or any enquiry, trial or other proceedings", "any person" and "any such person" clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the Court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case."



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9. On careful reading of the said judgment, it is clear that an opportunity of rebuttal must be given to the other party and the power conferred under Section 311 of Cr.P.C., must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons.

10. In order to meet the ends of justice and according to natural justice, it is appropriate to give a chance to the petitioners. Though the trial Court has stated that there is a delay of eight years and the petitioners have not availed that opportunity and there is no proof for compromise, in the interest of justice, considering the nature of offences and that none of the witnesses were cross examined and in order to give one more chance to the petitioners, this Court is inclined to allow these petitions on payment of cost. In view of the above judgment of the Hon'ble Supreme Court and facts and circumstances of the case, these petitions can be allowed on some conditions. The orders passed by the learned Judicial Magistrate No.I, Nagercoil in Crl.M.P.Nos.1136 of 2020 and 1499 of 2020 dated 17.02.2020 are liable to be set aside and accordingly the orders passed by the learned Judicial Magistrate No.I, Nagercoil in Crl.M.P.Nos.1136 of 2020 and 1499 of 2020 dated 17.02.2020, are set aside.



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11.In the result, these petitions are allowed by setting aside the orders passed in Crl.M.P.Nos.1136 of 2020 and 1499 of 2020 dated 17.02.2020 on the file of the learned Judicial Magistrate No.I, Nagercoil. The petitioners jointly shall deposit a sum of Rs.1,000/- each to the witnesses ie., totally Rs.18,000/- before the trial Court within a period of one week from the receipt of copy of this order and after deposit, the trial Court can fix convenient dates on its own for cross examination of witnesses. If the witnesses present on the date the petitioners have to cross examine without any delay. Further the learned Magistrate is directed to dispose the case as early as possible preferably within three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

25.07.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
Mrn

To

1.The Judicial Magistrate No.I, Nagercoil.



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P. DHANABAL,J.

Mrn

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