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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 13/06/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVA

Crl.OP(MD)No.6375 of 2023

and

Crl.MP(MD)No.6226 of 2023

Palas : Petitioner/Petitioner/
Accused

Vs.

The State of Tamil Nadu,
Rep. by the Sub Inspector of Police,
Thiruvathur Police Station,
Kanyakumari District.
(Crime No.595 of 2004)

: Respondent/Respondent/
Complainant

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to set aside the order, dated 07/02/2023 passed in Crl.MP No.15251 of 2022 in CC No.444 of 2018 by the Judicial Magistrate No.II, Padmanabhapuram.

For Petitioner : Mr.C.K.M.Appaji

For Respondent : Mr.B.Nambiselvan
Additional Public Prosecutor

O R D E R

This criminal original petition has been filed seeking in order to set aside the order, dated 07/02/2023 passed in Crl.MP No.15251 of 2022 in CC No.444 of 2018 by the Judicial Magistrate No.II, Padmanabhapuram.

**2.The facts in brief:-**

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The petitioner is facing the charges under sections 452, 324, 323, 506(i) and 506(ii) IPC, in Crime No.595 of 2004. Now the matter is pending before the trial court for advancing argument on the side of the prosecution and evidence. At that time, this petitioner filed a petition under section 311 of the Criminal Procedure Code to recall PW5, PW7, PW8, PW10 and PW11, since he omitted to cross examine those witnesses on the date of the chief examination. The above said application was dismissed by the trial court on the ground that PW5 was examined in chief on 19/11/2009 and PW7 and PW8 were examined on 27/04/2010 and PW10 was examined on 26/11/2020 and PW11 was examined on 17/11/2022; Much after several time, recall application was filed, noting that there is inordinate delay on the part of the petitioner, the above said petition came to be filed.

3.Against which, this petition came to be filed.

4.Heard both sides.



5. Offence under section 324 IPC is a heinous offence inviting the major punishment. PW5 was the Doctor, who examined the injured, treated and gave Wound Certificate. Similarly, PW7 is also one of the injured. PW8 was the another injured. PW10 is the Officer, who registered the FIR and recorded the statement of the witnesses. PW11 was the Investigating Officer. The reason for the non-cross examination of the above said witnesses has not been properly explained by the petitioner, either before the trial court or before this court.

6. But however, considering the fact that the petitioner is facing a serious offence under section 326 IPC, unless cross examination is made, fair justice may not be possible. On the sole ground, the impugned order passed by the trial court is set aside and this petition is allowed on the condition that let Rs.5,000/- each towards cost to the witnesses be deposited before the trial court within a period of two weeks from the date of receipt of a copy of this order. On such deposit, the trial court may recall the injured witnesses by fixing a particular date. On that particular date, the petitioner must cross examine the witnesses without seeking



adjournment. Similarly, the official witnesses, on the date to be fixed, as mentioned earlier, the petitioner must cross examine the official witnesses, on the same day itself and if any failure is noticed, then the further cross examination need not be undertaken by the trial court and the judgment must be pronounced after hearing the parties. On examination of all the witnesses are over, the above said cost may be paid to the witnesses as mentioned above.

7. With the above said, this criminal original petition stands **allowed**. The order passed by the Judicial Magistrate No.II, Padmanabhapuram, in CrI.MP No.15251 of 2022, dated 07/02/2023 is set aside. Consequently, connected Miscellaneous Petition is closed.

13/06/2023

Index:Yes/No
Internet:Yes/No
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G. ILANGO VAN, J

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To,

- 1.The Judicial Magistrate No.II,
Padmanabhapuram,
Nagercoil District.
- 2.The Sub Inspector of Police,
Thiruvathur Police Station,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.OP(MD)No.6375 of 2023

13.06.2023