



Crl.O.P.(MD).No.8337 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

Crl.O.P.(MD).No.8337 of 2019

and

Crl.M.P(MD) No.5212 and 11200 of 2019

Subair Banu

... Petitioner

Vs.

The Inspector of Police
Kottar Police Station,
Nagercoil,
Kanyakumari District

..Respondent

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to set aside the order of the learned Judicial Magistrate No.II, Nagercoil, Kanyakumari District dated 02.04.2019 made in Crl.M.P.No.2975 of 2019 in C.C. No.258 of 2014 and consequently permit the petitioner to continue the cross examination of P.W.1 forthwith

For Petitioner : Mr.S.Palani Velayutham

For Respondent : Mr.M.Sakthi Kumar
Government Advocate(Crl.Side)



CrI.O.P.(MD).No.8337 of 2019

ORDER

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This Criminal Original Petition has been filed to set aside the order of the learned Judicial Magistrate No.II, Nagercoil, Kanyakumari District dated 02.04.2019 made in CrI.M.P.No.2975 of 2019 in C.C. No. 258 of 2014 and consequently permit the petitioner to continue the cross examination of P.W.1 forthwith.

2. According to the petitioner the respondent police registered the case based on the complaint given by the defacto complainant in Crime No. 374 of 2014 for the offences under Sections 294(b), 323 and 324 of IPC. After completion of investigation filed charge sheet and the same was taken on file in C.C. No. 254 of 2014 for the offences under Sections 294(b), 323 and 326 of IPC and trial commenced. During cross examination of P.W.1 there was some wordy altercation between the Presiding Officer and the counsel appearing for the petitioner. Thereby the cross of P.W.1 was not completed and was stopped. Without completing cross examination the petitioner cannot put forth his defence and thereby chance has to be given to him for cross examining P.W. 1 and there is no fault on the part of the petitioner. The trial Court dismissed the petition filed by the petitioner under Section 311 of Cr.P.C to recall the P.W.1. Hence the order passed by the trial Court in CrI.M.P.No.2975 of 2019 is liable to be set aside.



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3. The learned counsel appearing for the petitioner contended that the petitioner is facing trial in C.C.No.258 of 2014 on the file of the learned Judicial Magistrate No.II, Nagercoil, Kanyakumari District for the offences under Sections 294(b), 323 and 326 of IPC. Already on 05.02.2019 during cross examination of P.W. 1 there was some quarrel between the counsel and the Presiding Officer and thereby the cross examination was stopped. Thereafter the petitioner has filed a petition before the learned Judicial Magistrate No.II, Nagercoil, Kanyakumari District in Crl.M.P.No.2975 of 2019 and the said petition was dismissed, hence in order to give fair chance to the petitioner to cross examine P.W.1 this petition may be allowed and the order passed by the learned Judicial Magistrate No.II, Nagercoil, Kanyakumari District is liable to be set aside.

4. The learned Government Advocate(Crl.Side) appearing for the respondent contended that during cross examination of P.W.1 there was some wordy quarrel between the counsel and the Presiding Officer, hence the cross examination of P.W.1 was stopped, however this Court may pass appropriate orders.

5. Heard both sides and perused the materials available on record.



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6. On perusal of the records it is observed that the learned Judicial Magistrate No.II, Nagercoil, Kanyakumari District had dismissed the application in Crl.M.P. No.2975 of 2019 by observing that there is no provision under Indian Evidence Act or the Code of Criminal Procedure to recall a witness on the ground of alleged interpolations and deliberate omissions creeping into the evidence. In this case it is an admitted fact that on the date of cross examination of P.W.1 he was not fully cross examined and only partly cross examined. Non cross examination on the date of previous hearing was not on the fault of the petitioner and due to quarrel between the Presiding Officer and the Counsel the cross examination was stopped. Whiles, in order to putforth his defence the petitioner may be given fair chance. Hence it is appropriate to give one more chance to the petitioner to cross examine P.W.1. In view of the same, the order passed by the learned Judicial Magistrate No.II, Nagercoil, Kanyakumari District in Crl.M.P.No.2975 of 2019 is liable to be set aside.

7. Accordingly this Criminal Original Petition is allowed and the order of the learned Judicial Magistrate No.II, Nagercoil, Kanyakumari District in dismissing the petition filed in Crl.M.P. No.2975 of 2019 for cross examination of P.W.1 is set aside. Considering the facts and circumstances of the case, the learned Judicial Magistrate No.II,



CrI.O.P.(MD).No.8337 of 2019

Nagercoil, Kanyakumari District is directed to complete the trial in C.C. No.258 of 2014 within a period of three months from the date of receipt of a copy of this order. Consequently connected miscellaneous petitions are also closed.

27.07.2023

Index : Yes / No
Internet : Yes / No
aav
To

1. The Inspector of Police
Kottar Police Station,
Nagercoil,
Kanyakumari District
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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CrI.O.P.(MD).No.8337 of 2019

P.DHANABAL, J.

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CrI.O.P.(MD).No.8337 of 2019

27.07.2023