



*Crl.O.P.(MD)Nos.7394 & 7397 of 2023*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.06.2023

Delivered on : 05.07.2023

CORAM

**THE HON'BLE MR.JUSTICE K.MURALI SHANKAR**

Crl.O.P.(MD)Nos.7394 and 7397 of 2023

1.S.P.K.Selvam

Chinnasamy (died)

2.Jegadeeswaran

: Petitioners  
(in Crl.OP(MD)No.7394/2023)

1.S.P.K.Selvam

2.Jegadeeswaran

Chinnasamy (died)

3.K.Sathiya

: Petitioners  
(in Crl.OP(MD)No.7397/2023)

Vs.

State through the Inspector of Police,  
SPE/CBI/ACB,  
Chennai.

: Respondent  
(in both petitions)

**PRAYER in Crl.O.P.(MD)No.7394 of 2023 : Criminal Original Petition**  
filed under Section 482 of Criminal Procedure Code, to call for the records



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and set aside the order dated 08.03.2023 passed in Cr.M.P.No.1461 of 2022 in C.C.No.3 of 2015 on the file of the learned Chief Judicial Magistrate, Madurai and direct the learned Chief Judicial Magistrate, Madurai to recall the P.W.1 to P.w.5 and P.W.7, P.W.8 and P.W.28 and P.W.29 for cross examination in C.C.No.3 of 2015 on the file of the learned Chief Judicial Magistrate, Madurai.

**PRAYER in CrI.O.P.(MD)No.7397 of 2023** : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records and set aside the order dated 08.03.2023 passed in Cr.M.P.No.1460 of 2022 in C.C.No.4 of 2015 on the file of the learned Chief Judicial Magistrate, Madurai and direct the learned Chief Judicial Magistrate, Madurai to recall the P.W.1, P.W.2, P.W.5, P.W.6, P.W.7, P.W.8, P.W.24, P.W.30 and P.W.37 for cross examination in C.C.No.4 of 2015 on the file of the learned Chief Judicial Magistrate, Madurai.

(in both petitions)

For Petitioners : Mr.M.Sridharan

For Respondent : Mr.C.Muthusaravanan,  
Special Public Prosecutor for CBI Cases.

### **ORDER**

These Criminal Original Petitions are directed against the orders passed in CrI.M.P.No.1461 of 2022 in C.C.No.3 of 2015 and CrI.M.P.No.1460 of



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2022 in C.C.No.4 of 2015, dated 08.03.2023 on the file of the Court of the Chief Judicial Magistrate, Madurai, dismissing the petitions filed under Section 311 of Code of Criminal Procedure.

2. The petitioners in both petitions are the accused in C.C.Nos.3 and 4 of 2015, facing charges under Sections 120(b) r/w 420, 468, 471 IPC and under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. It is not in dispute that after examination of the investigating officer, the above applications under Section 311 Cr.P.C came to be filed for recalling some of the witnesses for the purpose of cross examination.

3. In the first case in C.C.No.3 of 2015, the petitioner/accused has sought to recall the witnesses P.W.1 to P.W.5, P.W.7, P.W.8, P.W.28 and P.W.29 and whereas, in the case in C.C.No.4 of 2015, for recalling of P.W.1, P.W.2, P.W.5, P.W.6, P.W.7, P.W.8, P.W.24, P.W.30 and P.W.37. In both petitions filed under Section 311 Cr.P.C, the petitioners have canvassed a reason that the said witnesses were not cross examined due to counsel's sickness and that the petitioners have engaged another counsel to proceed with the case.



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4. It is evident from the impugned orders that the above witnesses were examined on various dates, four or five years before. As rightly contended by the learned Special Public Prosecutor, even assuming for arguments sake that the reason canvassed by the petitioners can be accepted to some extent, they have not offered any reason or explanation for not filing the above petitions immediately.

5. The learned Special Public Prosecutor would submit that some of the witnesses/Bank Officials got already retired from service and are residing in Chennai and in Andhra Pradesh.

6. At this juncture, the learned counsel for the petitioners would submit that the petitioners are restricting their prayer for recalling and cross examining the witnesses available in Madurai and nearby District of Trichy and Pudukkottai and they are not pressing their prayer with respect to other witnesses.



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7. A cursory perusal of Section 311 Cr.P.C., would show that where the evidence appeared to be essential for the just adjudication of a case, a witness could be recalled at any stage of the trial. As rightly pointed out by the learned Counsel for the petitioners, the above petitions under Section 311 Cr.P.C., came to be filed not for further cross examination, but for cross-examination itself.

8. No doubt, the petitioners/accused cannot be allowed to recall and cross-examine the witnesses at his whims and fancies, but at the same time, taking note of the fair trial concept, this Court is of the view that the petitioner should be given an opportunity to cross-examine the said witnesses and if such permission is granted, as rightly contended by the learned Counsel for the petitioner, no prejudice would be caused to the prosecution. Though the petitioners are at fault, considering the facts and circumstances 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 most of the petitioners are facing trial in two cases, this Court is of the clear view that the petitioners should be given one more opportunity to cross-examine the witnesses, but at the same time,



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this Court is also of the view that the petitioners must be mulcted with costs and 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 fail to cross-examine the said witnesses on that particular day, then they will forfeit their rights to cross-examine them.

9. In the result, both the Criminal Original Petitions are partly allowed and the impugned orders passed in Crl.M.P.No.1461 of 2022 in C.C.No.3 of 2015 and Crl.M.P.No.1460 of 2022 in C.C.No.4 of 2015, on the file of the Chief Judicial Magistrate Court, Madurai, dated 08.03.2023, are set aside, with respect to the witnesses shown in Serial Nos.3, 6, 7, 8 and 9 in Cr.M.P.No.1461 of 2022 and the witnesses shown in Serial Nos.3, 4, 5, 7 and 8 in Cr.M.P.No.1460 of 2022 and the petitions to recall the said witnesses are allowed on payment of costs of Rs.3,000/- for each witness (totally Rupees Thirty Thousand only) to the credit of Government of Tamil Nadu, Chief Minister Public Relief Fund (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 witness and on further condition that the petitioners' side should cross-examine the witness 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 right 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 six weeks from the date of receipt of a copy of this order.

**05.07.2023**

NCC : Yes/ No  
Index : Yes/No  
Internet : Yes/ No  
das

To

- 1.The Chief Judicial Magistrate,  
Madurai.
- 2.The Inspector of Police,  
SPE/CBI/ACB, Chennai.



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**K.MURALI SHANKAR,J.**

das

Pre-delivery order made in  
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Dated: 05.07.2023