



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.05.2023

CORAM:

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

CrI.O.P.(MD) No.9130 of 2023

and

CrI.M.P.(MD).No.7462 of 2023

Suji @ Kasi

...Petitioner

vs.

The State Rep by
The Inspector of Police,
CBCID, Nagercoil

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the entire records in connection with order passed in CrI.M.P.No.291 of 2023 in S.C.No.41 of 2021 by the learned Fast Track Mahila Judge, Kanyakumari at Nagercoil dated 11.05.2023 and set aside the same and allow the criminal original petition.

For Petitioner : Mr.Niranjana S.Kumar for
Mr.V.Balajirajaram

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor



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ORDER

This petition has been filed to call for the entire records in connection with order passed in CrI.M.P.No.291 of 2023 in S.C.No.41 of 2021 by the learned Fast Track Mahila Judge, Kanyakumari at Nagercoil dated 11.05.2023 and set aside the same and allow the criminal original petition.

2. The petitioner has filed a petition in CrI.M.P.No.291 of 2023 in S.c.No.41 of 2021 on the file of the Fast Track Mahila Court, Kanniyakumari District at Nagercoil, to permit him to inspect the material objects and non-supplied documents marked as exhibits and to recall P.W.1 (Victim Girl) and P.W.28 (Investigation Officer) for further cross examination.

3. The learned counsel for the petitioner submitted that the petitioner was unable to cross examine the P.W.1 and P.W.28 effectively, since copies of all the documents attached with the charge sheet were not furnished to him and he was not permitted to inspect/watch the material objects and non-supplied exhibits marked by the prosecution before cross examination of P.W.1 and P.W.28. He would further submit that some



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new facts are available in favour of the petitioner to disprove the charges against him and sufficient opportunity was not given to the petitioner to adduce defence evidence. He relied upon the judgment of the Hon'ble Supreme Court reported in **2022 Live Law (SC) 662** held as under:

*42. The Court is vested with a broad and wholesome power, in terms of Section 311 of the Cr.P.c., to summon and examine to recall and re-examine any material witness at any stage and the closing of prosecution evidence is not an absolute bar. This Court in **Zahira Habibulla H. Sheikh** (Supra) while dealing with the prayers for adducing additional evidence under Section 391 Cr.P.C., at the appellate stage, along with a prayer for examination of witnesses under Section 311 Cr.P.C., explained the role of the Court, in following terms:*

“43. The Courts have to take a participatory role in a trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses. Section 311 of the Code and Section 165 of the Evidence Act confer vast and wide powers on presiding officers of court to elicit all



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necessary materials by playing an active role in the evidence collecting process. They have to monitor the proceedings in aid of justice in a manner that something, which is not relevant, is not unnecessarily brought into record. Even if the prosecutor is remiss in some ways, it can control the proceedings effectively so that the ultimate objective I.e., truth is arrived at. This becomes more necessary where the court has reasons to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner. The Court cannot afford to be wishfully or pretend to be blissfully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and courts could not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness.”

Further, he would submit that the trial Judge ought to consider that the petitioner completed cross examination of all witnesses without fail on the earlier hearings of cross examination. Without, considering the above



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facts, the trial Court dismissed the above said petition.

4. The learned Additional Public Prosecutor appearing on behalf of the respondent police, would submit that the petitioner was given sufficient opportunities to contest the case and the reasons stated by him to recall the P.W.1 and P.W.28 are false. By filing these kind of petition, the petitioner is trying to drag on the trial proceedings.

5. On perusal of records it shows that sufficient opportunities were given to the petitioner to putforth his case, by examining those witnesses with regard to those material objects and the same was discussed by trial judge in Para 11 of his order. There is no infirmity or illegality in the order passed by the trial Court in CrI.M.P.No.291 of 2023, the same do not call for any interference. Further more, at the time of defence arguments, he filed this vexatious application, which clearly indicates the intention of the petitioner to drag on the proceedings as such as not be entertained.



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6. In the result, this Criminal Original petition is dismissed.

Consequently, connected miscellaneous petition is closed.

18.05.2023

Internet :Yes/No
Index :Yes/No
Speaking/Non speaking order
sbm

To

- 1.The State Rep by
The Inspector of Police,
CBCID, Nagercoil
- 2.The Additional Public Prosecutor
Madurai Bench of Madras High Court



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T.V.THAMILSELVI. J.,

sbn

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