



CrI.O.P.(MD)No.10524 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **20.07.2023**

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

CrI.O.P.(MD)No.10524 of 2023

Murugesan

... Petitioner

Vs.

The State rep. by
The Inspector of Police,
Vadipatty Police Station,
Madurai District.

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for records relating to the order passed in Cr.M.P.No.7225 of 2022 dated 18.02.2023 in C.C.No.92 of 2019 on the file the Judicial Magistrate, Vadipatti, and set aside the same and allow the petition for recalling the P.Ws.1 to 11 for cross-examination.

For Petitioner : Mr.R.Venkateswaran

For Respondent : Mr.SS.Madhavan
Government Advocate (Criminal)



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ORDER

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This Criminal Original Petition is filed aggrieved by the orders of dismissal of Cr.M.P.No.7225 of 2022 filed under Section 311 of Cr.P.C. on 18.02.2023.

2. The facts in brief as can be gathered from the record would go to show that the respondent police filed C.C.No.92 of 2019 on the file of the learned Judicial Magistrate, Vadipatti, for the offences punishable under Sections 279 read with 304A of IPC. After framing the charges, the matter was posted for trial and the prosecution has examined P.Ws.1 to 11, however, the petitioner/accused has not cross-examined all the witnesses, thereby, filed application under Section 311 of Cr.P.C., for recalling of all the witnesses for cross-examination. The trial Court has dismissed the application on 18.02.2023 observing that the petitioner has filed this application belatedly and that earlier also, the petitioner/accused has filed similar application that was dismissed.

3. Learned counsel for the petitioner submits before this Court that



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whatever may be the lapses on the part of the petitioner, since the prosecution witnesses were not cross-examined, prejudice would be caused to the petitioner/accused and thereby, sought for a direction to recall all the witnesses on whatever conditions imposed by this Court.

4. Learned Government Advocate (Crl.Side), on the other hand, opposes that the petitioner/accused has deliberately chosen not to cross-examine all the witnesses and therefore, the trial Court has rightly dismissed the petition.

5. Heard both sides and perused the records. Section 311 of Cr.P.C., reads as under:-

"311. Power to summon material witness, or examine person present.—Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential



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to the just decision of the case."

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6. Once the prosecution witnesses have been produced before the Court after examination-in-chief the accused shall cross-examine the witness without taking any adjournment. The practice of examination the witnesses in chief on one date and adjourning for cross-examination to other date shall be discouraged. Calling the witness again and again to the Court is a harassment to the witness. If a witness is called after long gap of examination-in-chief, the witness may forget what he has deposed. Further, there is a chance of witness being won over by the accused thereby, witness who has supported the prosecution in chief may turn hostile to the prosecution in the cross-examination. Hence, as far as possible, chief and cross-examination has to be done on the same day.

7. The petitioner is charged with the offences punishable under Section 279 read with 304A of IPC. This is a peculiar case where the petitioner/accused has not chosen to cross-examine all the 11 witnesses.

The petitioner/accused has not explained properly the reason for not



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cross-examining the P.Ws.1 to 11. This Court can appreciate the submission of the petitioner, in case, if the petitioner has cross-examined some of the prosecution witnesses and failed to cross-examine rest of the witnesses. But, as observed above, all the 11 witnesses were not cross-examined. Even in the grounds of this petition also, no valid reason is mentioned for non cross-examination of the prosecution witnesses. It is only mentioned that in case, if the petitioner is not allowed to recall the witnesses, the petitioner will loss his valuable and inalienable right of cross-examination.

8. It is true that in case, if the prosecution witnesses are not cross-examined, prejudice may likely to cause to the petitioner/accused but, that principle applies to a situation where the petitioner/accused is prevented from cross-examination on account of reasons, which are beyond his control and capacity. But here is the case where 11 prosecution witnesses were examined in different intervals, but all the times, the petitioner has deliberately chosen not to cross-examine the prosecution witnesses. The petitioner has not placed any reason for not to cross-examining the 11 witnesses.



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9. Further, trial Court has mentioned in the impugned order that after examination of 6 witnesses, the petitioner has filed an application under Section 311 of Cr.P.C. for recalling of witnesses but same was dismissed on 16.03.2021. Once the application for recalling of witnesses has already been dismissed, the petitioner instead of challenging the said order, filed one more similar application for recalling of not only 6 witnesses but also for the rest of the witnesses.

10. In view of the above, the trial Court has not committed error in dismissing the application filed by the petitioner for recalling of the witnesses. Therefore, this Court finds no reason to interfere in the order of the trial Court and accordingly, this petition is dismissed.

20.07.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PKN/mvs.

To

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

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DR.D.NAGARJUN,J

PKN/mvs.

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