



Crl.O.P(MD) No.14177 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :14.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

Crl.O.P(MD) No.14177 of 2021

and

Crl.M.P(MD) No.7417 of 2021

Muthukumar @ Ajithkumar

... Petitioner

Vs.

The Inspector or Police
Mamsapuram Police Station
Virudhunagar District

..Respondent

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records and set aside the order passed by the Chief Judicial Magistrate Court, Virudhunagar at Srivilliputhur in Crl.M.P. No.608 of 2020 in Crl.M.P. No.2755 of 2019 in S.C. No.56 of 2015 on 18.08.2021 and allow this Criminal Original Petition.

For Petitioner : Mr.M.Jothibas

For Respondent : Mr.R.M.Anbunithi
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to set aside the order passed by the Chief Judicial Magistrate Court, Virudhunagar at Srivilliputhur in Crl.M.P. No.608 of 2020 in Crl.M.P. No.2755 of 2019 in S.C. No.56 of 2015 on 18.08.2021



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2. The case of the petitioner is that in the trial Court Crl.M.P.No.2775 of 2019 was opened to determine the age of the petitioner as per the direction of this Court in Crl.O.P(MD) No15892 of 2017. Thereafter the trial Court had examined C.W.1 to C.W.3. Thereafter on the side of the respondent filed petition in Cr.M.P. No.2755 of 2019 in Crl.M.P. No. 608 of 2020 to recall C.W.2 and C.W.3 on the ground that the prosecution has reliable information with regard to the date of birth of the petitioner and where he born and some vital information was received and to that aspect the prosecution want to cross examine the witnesses C.W.2 and C.W.3, hence the petition was filed.

3. The respondent opposed the case by filing counter and stated that the case was posted for arguments and at this stage recall petition has been filed and one of the witnesses were examined in the presence of Additional Public Prosecutor and he also cross examined the witness CW.2 and the petition did not disclose about from whom and on what basis information has been gathered and the petition has been filed only to derail the proceedings. The trial Court has wrongly allowed the application by observing that plea of juvenility may be raised at any stage of a proceeding. When such a plea is raised the court has to cautiously deal with such question as the juvenile should not be made to face trial



as an adult and likewise an adult should not be given the treatment of a juvenile. Hence the trial Court allowed the petition to recall C.W.2 and C.W.3.

4. After hearing both parties the trial Court has allowed the petition. Aggrieved by the said order passed by the trial Court the present petition has been filed on the ground that already C.W.2 and C.W.3 were examined and cross examination was over on the same day and as per the direction of this Court only the witnesses were examined to determine the age of the petitioner in main petition. Already the Head master of the school was examined as C.W.1 and documents were marked as Ex.C.1 to C.5 and now prosecution has not stated anything about the recovery of new fact which necessitated to file this petition and in the impugned order no reasons were stated for cross examining the witnesses.

5. The learned counsel appearing for the petitioner would contend that as per the direction of this Court the trial Court had conducted enquiry to determine the age of the petitioner in Cr.M.P.No. 2755 of 2019 and the trial Court had examined C.W.1 to C.W.3 and marked Exhibits C.1 to C.5. The trial Court has already examined witnesses and then cross examined by the petitioner and accused on the date of examination. However ample opportunity was given to the Public

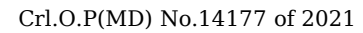
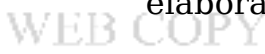


Prosecutor but C.W.3 has not been cross examined. Now only in order to delay the proceedings without any valid reason filed this application and no reference in this petition about the source of information and in what way the information is necessary to this case and to be cross examine the witnesses. Therefore the order of the trial Court has to be set aside.

6. The learned counsel appearing for the respondent would contend that already C.W.1 to C.W.3 were examined and C.W.1 and C.W.2 was cross examined and C.W.3 was not cross examined. The respondent received vital information about the place of birth of the petitioners thereby the cross examination of C.W. 2 and C.W.3 are very essential to arrive at a just conclusion. The trial Court also after taking into consideration of all the above aspects allowed the application. By allowing the application no prejudice will be caused to the petitioner, thereby the petition is liable to be dismissed.

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

8. On perusal of the record it is observed that as per the direction of this Court the trial Court has recorded the evidence of C.W.1 to C.W.3 but C.W.3 was not cross examined. C.W.2 is the mother of the petitioner and she is the main witness to determine the age of the



9. Accordingly the order passed by the learned Chief Judicial
te Court, Virudhunagar at Srivilliputhur in Crl.M.P. No.608 of
respect of C.W.2 is set aside as against C.W.3 is confirmed.

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and the order passed by the learned Chief Judicial Magistrate Court, Virudhunagar at Srivilliputhur in respect of recall of C.W.2 is set aside and recall of C.W.3 is confirmed. Consequently connected miscellaneous petition is closed.

14.09.2023

Index : Yes / No
Internet : Yes / No
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To

1. The Chief Judicial Magistrate Court,
Virudhunagar at Srivilliputhur
2. The Inspector or Police
Mamsapuram Police Station
Virudhunagar District
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL, J.

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