



CrI.O.P.(MD)No.12155 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.07.2023**

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

CrI.O.P.(MD)No.12155 of 2023

and

CrI.M.P.(MD) No.9582 of 2023

Jeyaprakash

... Petitioner

Vs.

State Represented through
The Sub-Inspector of Police,
Poovanthi Police Station,
Sivagangai District.
(Crime No.109 of 2019)

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the impugned order passed in CrI.M.P.No.7210 of 2023 in C.C.No.185 of 2022 dated 20.06.2023 on the file of the learned Judicial Magistrate No.II, Sivagangai, and direct the learned Chief Judicial Magistrate, Madurai, to recall the P.Ws.1 and 2 for cross-examination in C.C.No.185 of 2022 on the file of the learned Judicial Magistrate No.II, Sivagangai, by allowing this Criminal Original Petition.



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For Petitioner : Mr.K.Kumaravel

For Respondent : Mr.S.S.Madhavan
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition is filed challenging the orders passed by the learned Judicial Magistrate No.II, Sivagangai, dismissing the petition filed by the petitioner in Crl.M.P.No.7210 of 2023 in C.C.No.185 of 2022 under Section 311 of Cr.P.C, wherein, the request of the petitioner to recall P.Ws.1 and 2 for cross-examination was declined.

2. According to the learned counsel for the petitioner, the petitioner was charged for the offence under Sections 279 and 304(A) of IPC. When the matter was posted for trial, the prosecution has produced P.Ws.1 and 2 and both the witnesses were examined-in-chief on 05.06.2023. The petitioner/accused could not cross-examine both of them as the petitioner/accused senior counsel was not feeling well and that the petitioner/accused has no legal knowledge. The petitioner subsequently moved an application seeking to recall of P.Ws.1 and 2 under Section 311 of Cr.P.C. and same was dismissed. Aggrieved by the same, this petition is filed.



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3. 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 to the just decision of the case."

4. According to the petitioner/accused, on 05.06.2023, the petitioner's senior counsel who was supposed to cross-examine was not available in the Court on account of ill health, thereby P.Ws. 1 and 2 could not be cross-examined. Once the counsel who has to lead the case was fell sick and not physically available to cross-examine P.Ws.1 and 2, the trial Court should have considered the request of the petitioner to adjourn the cross-examination of P.Ws.1 and 2 to some other date may



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be on payment of costs. The evidence of any witness is not complete with chief examination alone unless the witness is cross-examined by the accused. The Court require to find the truth or otherwise of the prosecution case. It can be done only after subjecting the witnesses to the cross-examination, so that the Court can decide the veracity of the statement of witness in chief examination by comparing with cross-examination of P.Ws.1 and 2. The Court will also compare P.Ws.1 and 2 evidence with rest of the materials placed before the Court by the prosecution and to decide whether the witnesses are speaking truth or false. Therefore, when the Court fails to bring forth the truth on account of not permitting the petitioner/accused to cross-examine P.Ws.1 and 2, there is no purpose for the trial. The trial Court should sympathetically considered the request of the petitioner/accused to recall P.Ws.1 and 2 for cross-examination. It is one thing if the accused has examined P.Ws.1 and 2 in cross and files an application under Section 311 of Cr.P.C. for the purpose of further cross-examination and it is the other thing like the case on hand that P.Ws.1 and 2 are not cross-examined at all. On account of not permitting the petitioner/accused to cross-examine P.Ws.1 and 2, the trial Court may ultimately find the petitioner/accused guilty under



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Sections 279 and 304(A) of IPC. Therefore, the impugned order is required to be quashed. Accordingly, this Criminal Original Petition is allowed and the order dated 20.06.2023 passed in Crl.M.P.No.7210 of 2023 in C.C.No.185 of 2022 is quashed.

5. Learned Judicial Magistrate shall fix the date for cross-examination of P.Ws.1 and 2 in consultation with learned Public Prosecutor as well as the learned counsel for the petitioner/accused and once the witnesses appeared on the date specified, the counsel for the petitioner/accused shall cross-examine the witnesses without seeking further adjournment. Consequently, connected criminal miscellaneous petition is closed.

13.07.2023

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



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- To
- 1.The Sub-Inspector of Police,
Poovanthi Police Station,
Sivagangai District.
 - 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR.D.NAGARJUN,J

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