



Crl.O.P.(MD)No.13797 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **09.08.2023**

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

Crl.O.P.(MD)No.13797 of 2023

and

Crl.M.P.(MD) No.10763 of 2023

1.Nagalingam
2.Rubi Santhagumari

... Petitioners

Vs.

State represented by
The Sub-Inspector of Police,
Paramakudi Town Police Station,
Paramakudi.

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order dated 06.06.2023 made in Crl.MP.No.1318 of 2022 in CC.No.77 of 2016 on the file of the Judicial Magistrate Court, Paramakudi.

For Petitioner : Mr.D.Senthil

For Respondents : Mr.SS.Madhavan
Government Advocate (Crl. Side)



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ORDER

This Criminal Original Petition is filed setting aside the orders passed in Crl.M.P.No.1318 of 2022 in C.C.No.77 of 2016 pending on the file of Judicial Magistrate Court, Paramakudi, wherein, the petition filed by the petitioners/accused No.2 and 3 seeking to recall P.Ws.1 to 3 and 28 was not considered.

2. The facts in brief as can be gathered from record would go to show that the respondent police have filed C.,C.No.77 of 2016 on the file of the Judicial Magistrate Court, Paramakudi, alleging that the petitioner has committed offences under Sections 457, 380, 120(b) and 114 of IPC and trial has taken place after prosecution evidence was closed, the accused were examined under Section 313 of Cr.P.C., and the matter was posted for the accused evidence, at that time, the petitioner has filed Crl.M.P.No.1318 of 2022 seeking to recall P.Ws.1 to 3 and 28.

3. The copy of the petition filed by the petitioner seeking to recall of P.W.1 shows that that P.Ws.1 to 3 and 28 could not be cross-examined



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on account of unavoidable circumstances and that the cross-examination of P.Ws.1 to 3 is necessary to prove the innocence of the accused, otherwise irreparable loss will be caused to the petitioners/accused.

4. The respondent has filed counter in the trial Court stating that in spite of best opportunity given to the petitioners, the witnesses were not cross-examined and that the petitioner was filed at belated stage. On considering the rival contentions, the trial Court has dismissed the petitioner thereby, this petition is filed before this Court.

5. Section 311 of Cr.P.C. permits the Court to direct any material witness to be examined or/and re-examine at any time during the course of trial. Section 311 of Cr.P.C., runs as under:-

"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



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or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case "

On considering the above, it is clear that the petitioner can avail the opportunity of seeking for recall of material witnesses under Section 311 of Cr.P.C. at any stage of an inquiry, the trial or other proceedings under the Court.

6. As per the record, the prosecution has produced all the witnesses and the accused were questioned under Section 313 of Cr.P.C. and case was posted for defence/accused side evidence. P.Ws.1 to 3 were cross-examined on 02.11.2016 and during the period of seven years, the petitioners have never made an attempt to file an application to recall P.Ws.1 to 3 for the purpose of cross-examination. Similarly, P.W. 28/Investigating Officer was examined on 24.02.2021 and in respect of this witness also the petitioner did not make any effort until the impugned application is filed before the trial Court.

7. Delay in filing application is not always fate. However, the only question to be considered is whether there were reasonable grounds for



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the petitioner in not cross-examining the witnesses on the day they were produced before the Court and also on the subsequent days until the petition is filed. If at all there are circumstances which are beyond the control of the petitioners certainly this Court will consider the case of the petitioner sympathetically. It is submitted by the petitioner that due to unavoidable circumstances the witnesses could not be examined. The phrase 'unavoidable circumstances' is a generic word. Anything under the sky can be unavoidable circumstances. The petitioners should have been very specific as to why and on what reason they could not cross-examine P.Ws.1 to 3 but there is no explanation offered for non cross-examination of the witnesses except that due to unavoidable circumstances.

8. Even if the reasoning of “unavoidable circumstances” for non examination of P.W.1 to P.W.3 is accepted, it is not clear as to whether those unavoidable circumstances were persistent and were continued as no explanation was offered by the petitioners for not filing the petition to recall of P.W.1 to P.W.3 for seven long years.



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9. In view of the above, the petitioners failed to convince the Court that there were unavoidable circumstances for non cross-examination of P.Ws.1 to 3, 28 and therefore, the trial Court has rightly considered the facts and dismissed the petition. This Court finds no reason to interfere with the order of the trial Court and accordingly, this petition is dismissed. Consequently, the connected miscellaneous petition is closed.

09.08.2023

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

To

- 1.The Sub-Inspector of Police,
Paramakudi Town Police Station,
Paramakudi.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR.D.NAGARJUN,J

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Dated: 09.08.2023