



Crl.O.P.(MD)No.13204 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **31.07.2023**

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

Crl.O.P.(MD)No.13204 of 2023

1.Ashok Kumar @ Ramachandran
2.Muthuramalingam @ Kurangu Muthuramalingam
3.Muthupandi @ Mark Muthupandi ... Petitioners

Vs.

State Represented through
The Inspector of Police,
Ambathurai Police Station,
Ambathurai, Dindigul District.
(Crime No.392 of 2010) ... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order of the Principal Sub-Court, Dindigul made in Cr.M.P.No.12/2023 in S.C.No.244/2018 dated 03.02.2023 on the file of Principal Sub-Court, Dindigul and to allow this petition.

For Petitioners : Mr.P.Santhana Krishnan

For Respondent : Mr.B.Thanga Aravindh
Government Advocate (Crl. Side)



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ORDER

This Criminal Original Petition is filed seeking for quashment of orders passed by learned Principal Subordinate Judge, Dindigul, in Cr.M.P.No.12/2023 in S.C.No.244/2018 dated 03.02.2023 declining to recall P.Ws.1 to 4 for the purpose of cross-examination under Section 311 of Cr.P.C.

2. The facts as per record would go to show that the petitioner/accused is facing a charge under Section 395 r/w. 397 of IPC. On 21.11.2022, P.Ws.1 to 4 produced before the Court and after cross-examination-in-chief, when they were required to be cross-examined the P.Ws.1 to 3, the counsel of the petitioner/accused could not cross-examine due to inadvertence and thereby, the cross-examination was not recorded and ultimately, the matter was posted for further arguments. The petitioner/accused with the intention to cross-examine P.Ws.1 to 4 has filed an application but same was dismissed by the learned trial Judge by way of an interim order.



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3. Heard both sides and perused the record.

4. Learned counsel for the petitioners would submit that non cross-examination of P.Ws.1 to 4 in cross is neither willful nor intentional but it was on account of certain situations beyond the control of the petitioners. On account of inadvertency, the petitioners could not filed the application for adjournment when the petitioners/accused was asked to cross-examine the P.Ws.1 to 4. It is submitted that lot of prejudice would cause to the petitioners/accused, if the petition is not allowed.

5. Learned Government Advocate (Crl. Side), on the other hand, submits that though P.Ws.1 to 4 were examined on 21.11.2022, the petitioners have filed application for recalling of witnesses after three adjournments with the intention to prolong the case. It is also further stated that since the witnesses belong to other districts, in case if the petition is allowed, it will cause lot of hardship to the witnesses.



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6. On perusal of the orders of learned trial Judge which would go to show that on the day when P.Ws.1 to 4 were examined , the petitioner neither cross-examined nor has filed an application seeking adjournment. However, so far as accused No.4 is concerned, who was being represented by other counsel has filed an application for deferring the cross-examination. Accordingly, P.Ws.1 to 4 were asked to appear on the following date and on which date, P.Ws.1 to 4 were cross-examined by the accused No.4. The said factum was also endorsed in the deposition of witnesses P.Ws.1 to 4 before the trial Court.

7. It is not a case where the petitioners have availed the opportunity of cross-examining P.Ws.1 to 4 earlier and seeking for re-cross examining the witnesses. The petitioners have been facing the grave charge under Section 395 r/w. 397 of IPC. Irrespective of the fact as to the nature of the charge that the petitioners are facing, once the prosecution witnesses are not cross-examined, certainly the petitioners/accused will be put to prejudice as the evidence of entire prosecution witnesses, i.e., P.Ws.1 to 4 becomes unrebutted or unchallenged. In case if the P.Ws.1 to 4 were asked to cross-examine,



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then the truth or otherwise of the witnesses would come to light, thereby the Court may likely to decide the matter basing on the facts placed before the Court by the witnesses and prosecution.

8. Prior to the determination of a person as guilty of charges, the principles of natural justice require that the accused shall be permitted to defend. In case, if the accused is undefended by the qualified Advocate, the Court will provide assistance with the funds of the State, so that the accused is properly assisted during the course of trial including cross-examination of the other witnesses. In case, if the accused themselves engage the Advocate and if the said Advocate failed to cross-examine the witnesses, may be, on account of "inadvertence", ultimately, the accused will be put to loss and sufferings. Therefore, when there is no strong reason for refusal to permit the petitioners/accused to cross-examine P.W.1 to 4, the petition for recalling of P.Ws.1 to 4 can be considered sympathetically.

9. Further, in the case on hand, it is also seen from the orders of the trial Court that within three adjournments after recording of chief



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examination of P.Ws.1 to 4, the petitioners have moved application for recalling for cross-examination, therefore there is no much delay as well as trial is not yet completed.

10. Considering the circumstances, an opportunity shall certainly be given to the petitioners/accused to cross-examine P.Ws.1 to 4 on payment of costs of Rs.2,000/- (Rupees Two Thousand only) by each of the petitioners, failing which, the order of this Court stands dismissed. Accordingly, this Criminal Original Petition is allowed and the order dated 03.02.2023 passed in Cr.M.P.No.12/2023 in S.C.No.244 of 2018 is quashed.

31.07.2023

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



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- To
- 1.The Inspector of Police,
Ambathurai Police Station,
Ambathurai, Dindigul 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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