



Crl.O.P.(MD)No.15097 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.09.2023

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

Crl.O.P.(MD)No.15097 of 2023
and Crl.M.P.(MD) No.11957 of 2023

Kannagi

... Petitioner

Vs.

State Rep. by the
Inspector of Police
District Crime Branch
Sivagangai, Sivagangai District.
(Crime No.8/2016)

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining the order passed in Crl.MP.No.7564 of 2023 in C.C.No.100 of 2020 on the file of the J.M.-II, Sivagangai, dated 07.07.2023.

For Petitioner : Mr.R.Murugan

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



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ORDER

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This petition is filed questioning the orders passed by the trial Court in Crl.MP.No.7564 of 2023 in C.C.No.100 of 2020 on the file of learned Judicial Magistrate No.II, Sivagangai, rejecting to recall P.Ws.1 to 3.

2. It is the case of the prosecution that the petitioner's father-in-law died in a motor accident in the year 1994 and MCOP No.95 of 1994 was filed seeking compensation and there were disputes in respect of distribution of compensation amount among the legal heirs of the deceased person. On the allegation that the petitioner has impersonated and forged the signature of the petitioner's sister-in-law, a case has been registered in Crime No.8 of 2016 and charge sheet has been filed after investigation in C.C.No.100 of 2020. The disputed document was sent to hand writing expert and the said report is against the prosecution. During the course of trial, P.Ws.1 to 3 were examined in chief on 06.06.2023 and on that date, cross-examination could not be proceeded with on account of preoccupation of the counsel for the petitioner. Though the petitioner's junior counsel was present and he has filed application on



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06.06.2023, learned Magistrate stated to have directed to him to file application on the next hearing date i.e. on 04.07.2023. Learned Magistrate directed P.W.3 to be present on 04.07.2023. The application under Section 311 of Cr.P.C. was filed. On the date, P.W.4 was examined and learned Magistrate informed that there shall not be afternoon session as he would not hold the Court in afternoon session and the case was again adjourned to 07.07.2023. However, the application filed under Section 311 of Cr.P.C. was considered and dismissed without hearing the petitioner.

3. It is submitted by learned counsel for the petitioner that non examination of witnesses would affect the petitioner adversely and on account of non availability of his counsel, cross-examination could not be done and therefore sought for recalling of P.Ws.1 to 3.

4. Heard both sides and perused the record.

5. Learned Magistrate has while quoting the directions of Hon'ble Apex Court that cross-examination of the witnesses shall not be deferred



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for a long time and that the cross-examination has been deferred to next hearing date and thereby dismissed the petition.

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

7. 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



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under the Court.

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8. P.Ws.1 to 3 were not able to cross-examine in this case. It is specifically mentioned that counsel who has to lead the case of the petitioner was not available in the Court on account of his precondition may be in some other Court and the junior counsel of the petitioner was present and filed application. However, learned Magistrate stated to have advised him to file application on the next hearing date. When the petitioner's junior counsel filed application on the next hearing date it was informed allegedly by learned Magistrate that he would not holding the Court during afternoon session. However, in the afternoon he has dismissed the recall petition and passed the impugned orders.

9. This Court will not accept the submissions of the petitioner that learned Magistrate has directed the petitioner to file recall application on the next date of hearing and that he has informed that he will not be holding the Court in afternoon session, as there is no material to that extent.

10. Be that as it may. Cross-examination of principal witnesses is



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mandatory in order to unearth the truth in respect of the facts alleged against the petitioner/accused. When the application is filed to recall P.Ws.1 to 3 on the next hearing date, the cross-examination should have been permitted by the trial Court. Learned Magistrate has quoted the authority of *Vinod Kumar Sharma v. State of Punjab* reported in **2015 (3) SCC 220** wherein it is observed that in case if the cross-examination could not be done on the date of chief-examination, it is to be taken up on the next day. In the present case, P.Ws.1 to 3 were examined in chief on 06.06.2023 and cross-examination could not be done, since the junior counsel was not available. The trial Court could have adjourned the matter to next date with a condition the petitioner to cross-examine the witnesses. However, the trial Court adjourned the matter to longer date even on the day also though application was filed for recalling, the same was declined.

11. The Hon'ble Supreme Court in the case of *P.Sanjeeva Rao v. State of Andhra Pradesh* reported in **(2012) 7 SCC 56**, has held as under:-

“We are conscious of the fact that recall of the witnesses is being directed nearly four years after they were



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examined in chief about an incident that is nearly seven years old. Delay takes a heavy toll on the human memory apart from breeding cynicism about the efficacy of the judicial system to decide cases within a reasonably foreseeable time period. To that extent the apprehension expressed by Mr. Rawal, that the prosecution may suffer prejudice on account of a belated recall, may not be wholly without any basis. Having said that, we are of the opinion that on a parity of reasoning and looking to the consequences of denial of opportunity to cross-examine the witnesses, we would prefer to err in favour of the appellant getting an opportunity rather than protecting the prosecution against a possible prejudice at his cost. Fairness of the trial is a virtue that is sacrosanct in our judicial system and no price is too heavy to protect that virtue. A possible prejudice to prosecution is not even a price, leave alone one that would justify denial of a fair opportunity to the accused to defend himself."

12. Considering the above, this Criminal Original Petition is allowed and the order dated 07.07.2023 passed in Crl.M.P.No.7564 of 2023 in C.C.No.100 of 2020 is quashed insofar as not permitting the petitioner to cross-examine P.Ws.1 to 3. The trial Court is directed to issue summons to P.Ws.1 to 3 for cross-examination. Consequently,



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connected miscellaneous petition is closed.

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26.09.2023

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

PKN/mvs.

To

1.District Crime Branch
Sivagangai, 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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