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Crl.O.P.(MD)No.16322 of 2023



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.10.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **G.ILANGOVAN**

Crl.O.P.(MD)No.16322 of 2023

Jeyaraj

... Petitioner

Vs.

State Represented through
The Sub Inspector of Police,
DCB Police Station,
Theni.
(Crime No.04 of 2011)

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to the impugned order dated 30.05.2023 in CNR No.TNTH02-004223-2023 in C.C.No.19 of 2014 on the file of the learned Judicial Magistrate, Theni and set aside the same as illegal and direct the learned Judicial Magistrate, Theni to recall the P.W. 1 to P.W.8 and P.W.11 for cross examination in C.C.No.19 of 2014 on the file of the learned Judicial Magistrate, Theni.

For petitioners : Mr.M.Jerin Mathew
For R1 : Mr.M.Vaikkam Karunanithi
Government Advocate (Crl.side)

ORDER

This petition has been filed seeking to quash the order dated 30.05.2023 in CNR No.TNTH02-004223-2023 in C.C.No.19 of 2014 on the file of the learned Judicial Magistrate, Theni and direct the learned



Judicial Magistrate, Theni to recall P.W.1 to P.W.8 and P.W.11 for cross examination in C.C.No.19 of 2014

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2.The petitioner is facing charges under Sections 465, 468, 471, 420 and 109 IPC in C.C.No.19 of 2014. The charge sheet is of the year 2014. The trial has commenced. P.W.1 to P.W.8 and P.W.11 were also examined in chief. On the date of chief examination or within the reasonable time, the witnesses examined in chief were not cross examined. Hence, seeking recall of those witnesses, the petitioner filed application under Section 311 Cr.P.C., in CNR No.TNTH02-004223-2023. That came to be dismissed by the trial Court by order dated 30.05.2023. Challenging the same, the present petition has been filed.

3.The learned counsel for the petitioner would submit that only due to non cooperation of the earlier counsel appointed by the petitioner, they were not able to cross examine the witnesses on the date of chief examination. He further submits that the petitioner ought to have been granted an opportunity of cross examining the witnesses for a fair trial. But, the trial Court had rejected the request of the petitioner to recall the witnesses. Hence, he prays for allowing this petition.



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4.The learned Government Advocate (Crl.side) for the respondent police submits that in this case, even after sufficient opportunities were given to the petitioner for cross examining the witnesses, he failed to avail the same. Hence, he opposes this petition.

5.Heard both sides.

6.Perusal of records shows that sufficient opportunity was given to the petitioner for the purpose of cross examining the witnesses. In spite of that, he failed. Even though there is failure and laches on the part of the petitioner, considering the nature of offences facing by the accused, this Court is of the view that one final opportunity may be given to the petitioner on payment of costs, since without cross examining the above said witnesses, fair justice may not be possible.

7.On that ground, this Court is inclined to pass the following order.

1. The order of dismissal passed by the learned Judicial Magistrate, Theni dated 30.05.2023, in CNR No.TNTH02-004223-2023 in C.C.No.19 of 2014, is hereby set aside.

2. The petitioner must deposit a sum of Rs.5,000/- (Rupees five Thousand only) to each of the witnesses as costs to the credit of



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C.C.No.19 of 2014 before the trial Court, within a period of one week from the date of receipt of a copy of this order.

3. On such deposit, the trial Court is directed to recall the witnesses namely PW1 to PW8 and PW11 for cross examination by fixing a particular date. On that date, the petitioner must cross examine the witnesses without fail. It is made clear that if any failure is noticed, then the further right to cross examine the witnesses will be forfeited.

8.Considering the oldness of the crime and the case is of the year 2014, there shall be a direction to the the trial Court to expedite the trial process in this case and conclude the same within a period of five months from the date of receipt of a copy of this order.

9.With the above said directions, this criminal original petition is allowed.

16.10.2023

Index : Yes/No
Internet : Yes/No
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To

- 1.The Judicial Magistrate, Theni.
- 2.The Sub Inspector of Police,
DCB Police Station,
Theni.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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G.ILANGOVAN. J.

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