



Crl.R.C.(MD).No.96 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.02.2023

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.R.C.(MD).No.96 of 2023
and Crl.M.P.(MD).No.1315 of 2023

Mr.Suresh

... Petitioner

Vs.

State represented by
The Inspector of Police,
Surandai Police Station,
Tenkasi District.
(Crime No.166 of 2014)

... Respondent

PRAYER: This Criminal Revision Case is filed under Sections 397 & 401 of the Criminal Procedure Code, to call for the records relating to the impugned order passed in Cr.M.P.No.3338 of 2021 in SC.No.637 of 2017, on the file of the Principal Sessions Judge Tirunelveli dated 06.07.2022 and set aside the same and allow this Revision Petition.

For Petitioner : Mr.R.J.Karthick

For Respondent : Mr.M.Sakthikumar
Government Advocate (Crl. Side)



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ORDER

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This Criminal Revision case has been filed against the order passed in Cr.M.P.No.3338 of 2021 in S.C.No.637 of 2017, on the file of the Principal Sessions Judge, Tirunelveli, dated 06.07.2022.

2.The facts in brief:

The petitioner is facing charges under Section 302 IPC on the file of the Principal District and Sessions Judge, Tirunelveli. The allegation against this revision petitioner is that he caused murder of his own wife, since he was not liking her. Now, in the trial process, examination of prosecution witnesses are over and the case was posted for defence side witness. At that time, this revision petitioner has made out a petition to examine the mother of the deceased, namely Ponnuthai on his side. The above said Ponnuthai was shown as third witness in the final report. The father of the deceased was examined as PW2. Now, her evidence has been dispensed by the prosecution. But that witness is sought to be summoned by the petitioner on his side as defence witness. That petition was dismissed by the trial Court on the ground that it is a delaying tactics and there is no necessity for examining the mother of the deceased as defence side witness. The deceased's signature was found to be tallied with that of the document



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that was collected and sent for forensic laboratory.

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3.Now challenging the above said order, this revision has been preferred by the petitioner on the ground that the mother was also aware of the reason for the suicide committed by the deceased. Moreover, a suicide note is also available and her signature was also sent for Expert opinion and now the report is also available on record. Only for the purpose of proving the signature of the deceased, he wants to examine her on his side, since she is also aware of the dispute and the reason for the above said suicide.

4.Per contra, the learned Additional Public Prosecutor submitted that since the father of the deceased was already examined as witness on the side of the prosecution, during the course of investigation the very same fact has been narrated by her, no purpose is going to be served in examining the mother of the deceased.

5.The entire records have been called for and perused.

6.As I mentioned earlier, the father of the deceased was examined as PW2 and what sort of cross examination was made by the petitioner is not



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known and no particulars are also available on record. Whether the father of the deceased was cross examined with reference to the signature is also not known. Now, whatever it may be, when the prosecution choose not to examine the listed witness on its side, right is always available to the accused to summon the particular witness as defence witness. But, however, the trial Court has dismissed the petition on the ground of delaying tactics. I am of the considered view that since the petitioner is facing charges under Section 302 IPC, full opportunity must be given to him at least in the interest of the fair trial.

7. On the sole ground this Court interfered with the order of dismissal passed by the trial Court and inclined to allow this revision case. Accordingly, this revision stands **allowed** and the order passed in Cr.M.P.No.3338 of 2021 in S.C.No.637 of 2017, on the file of the Principal District and Sessions Judge Tirunelveli, dated 06.07.2022, is hereby set aside, with condition that the petitioner must pay batta and cost of Rs.2,000/- (Rupees Two Thousand only) to the above said Ponnuthai. The above cost must be deposited by the petitioner to the credit of this case number before the trial Court, within a period of one week from the date of receipt of a copy of this order. On such deposit being made, the trial Court



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shall issue summon to the above said Ponnuthai; she must be examined in chief and cross examined on the same day itself without fail. If any failure is noted on the part of the revision petitioner, his right to examine her will stand forfeited. Consequently, connected miscellaneous petition is closed.

13.02.2023

Index : Yes / No
Internet : Yes / No
TM

To

1. The Principal District and Sessions Judge, Tirunelveli.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGOVA,J.

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