



Crl.O.P.(MD) No.1105 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 25.01.2023

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THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

CRL.O.P.(MD).No.1105 of 2023

M.Selvam

: Petitioner

Vs.

State represented by
The Inspector of Police,
Kannivadi Police Station,
Dindigul District.
Crime No.234 of 2014.

: Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C, to set aside the impugned order dated 13.10.2022 in Cr.M.P.No.3565 of 2022 in S.C.No.216 of 2017 on the file of the learned Additional District and Sessions Judge, Dindigul and direct the learned Additional District and Sessions Judge, Dindigul to recall the P.W.11 and P.W.13 for cross examination in S.C.No.216 of 2017.

For Petitioner : Mr.Navith Ahamed,
for Mr.K.Balamurugan,

For Respondent : Mr. R.Sivakumar,
Government Advocate(Crl.Side)



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ORDER

This Criminal Original Petition is filed, under Section 482 of Cr.P.C., to set aside the impugned order dated 13.10.2022 in Cr.M.P.No.3565 of 2022 in S.C.No.216 of 2017 on the file of the learned Additional District and Sessions Judge, Dindigul and direct the learned Additional District and Sessions Judge, Dindigul to recall the P.W.11 and P.W.13 for cross examination in S.C.No.216 of 2017.

2. The petitioner is the first accused in S.C.No.216 of 2017 on the file of the Additional District and Sessions Judge, Dindigul.

3.It is not in dispute that the petitioner has filed a petition in Cr.M.P. No.3565 of 2022, under Section 311 of Cr.P.C, seeking permission to recall P.W.11 and P.W.13 for cross examination.

4.The petitioner's case is that when the witnesses P.W.11 and P.W.13 were examined, the failure on the part of the petitioner to put forth the questions on earlier occasion is neither intentional nor wanton, but only due



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to the mistake of the counsel, that the witnesses sought to be recalled are official witnesses and there is no such possibility either to tamper or hamper them; that the petitioner will be put to great prejudice, if the said witnesses are not cross examined and that therefore, the petitioner was constrained to file the above petition under Section 311 Cr.P.C.

5.No doubt, the respondent has raised serious objections for allowing the said petition. The learned Sessions Judge, after enquiry, has passed the impugned order, dated 13.10.2022 dismissing the said petition. Aggrieved by the said dismissal order, the accused has come forward with the present petition invoking Section 482 Cr.P.C for setting aside the impugned order.

6.The learned trial Judge, by observing that P.W.11/then Village Administrative Officer and P.W.13/Postmortem Doctor, were cross examined in full by the accused and the petitioner has not made out any case for further cross examination, dismissed the petition.

7.In the case on hand, as rightly observed by the learned trial Judge that P.W.1 and P.W.13 were examined in Chief and also cross examined.



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8. Considering the facts and circumstances of the case and also taking note of the fact that the petitioner is facing trial for the serious offences, this Court is of the clear view that the petitioner should be given one more opportunity to cross examine the witnesses. But at the same time, considering the length of delay and the conduct of the petitioner, this Court is of the further view that the petitioner must be mulcted with costs and with further condition that the petitioner/accused, should cross examine the witnesses on the day, when the witnesses are produced before the Court and if for any reason, the petitioner fails to cross examine the said witnesses on that particular day, then he will forfeit his right to cross examine them.

9. In the result, the Criminal Original Petition is allowed and the impugned order, dated 13.10.2022 in Cr.M.P.No.3565 of 2022 in S.C.No.216 of 2017 on the file of the learned Additional District and Sessions Judge, Dindigul, is set aside and the petition to recall the witnesses is allowed on payment of cost of Rs.10,000/- (Rupees Ten Thousand Only) to the credit of Government of Tamil Nadu, CMPRF in IOB, Secretariat Branch, Chennai-9 (Account No.11720 10000 00070, IFSC Code: IOBA0001172) and on



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payment of process fee and batta to the said witnesses and on further condition that the petitioner side should cross examine the witnesses whenever the witnesses are produced before the Court and in case of the petitioner's failure to cross examine the particular witness, then he will forfeit his right to cross examine the witness. The trial Court is directed to summon the said witnesses for the purpose of cross examination and complete the examination of the said witnesses within one month from the date of receipt of copy of this order. Consequently, connected Miscellaneous Petition is closed.

25.01.2023

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

To

- 1.The Additional District and Sessions Judge,
Dindigul.
- 2.The Inspector of Police,
Kannivadi Police Station,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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K.MURALI SHANKAR,J.

das

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