



Crl.O.P.(MD)No.23057 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.01.2023

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.23057 of 2022

and

Crl.M.P.(MD)No.16346 of 2022

A.Veeraiah

... Petitioner

Vs.

State through
The Inspector of Police,
Sivagangai Taluk Police Station,
(Crime No.374 of 2016)

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records relating to the order in Crl.M.P.No.6908 of 2022 on the file of the learned Chief Judicial Magistrate, Sivagangai dated 03.11.2022 and set aside the same as illegal and allow the petitioner to recall the witnesses P.W.1 to P.W.5 for cross examination.

For Petitioner : Mr.M.Karunanithi

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



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ORDER

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This Criminal Original Petition filed, under Section 482 Cr.P.C., is directed against the order passed in Crl.M.P.No.6908 of 2022 in C.C.No. 340 of 2022, dated 03.11.2022, on the file of the Chief Judicial Magistrate, Sivagangai.

2. The petitioner is the sole accused in C.C.No.340 of 2022 on the file of the Chief Judicial Magistrate, Sivagangai and is charged for the offence under Section 304(A) IPC.

3. It is not in dispute that the petitioner has filed a petition under Section 311 Cr.P.C., seeking permission to recall P.W.1 to P.W.5 for cross examination.

4. The petitioner's case is that when the witnesses P.W.1 to P.W.5 were examined, his counsel was not available, that the above witnesses are material witnesses, that due to non-availability of the defence counsel, the said witnesses were not cross examined, that their failure to cross examine the said witnesses is neither willful nor wanton, that the



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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 Magistrate, after enquiry, has passed the impugned order, dated 03.11.2022 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. It is not in dispute that P.W.1 to P.W.5 were examined in Chief on 11.11.2019. The learned trial Judge, by observing that the above petition is filed with a delay of 3 years, after the examination of the witnesses P.W.1 to P.W.5 and the said reason is not acceptable one under law, has come to a decision that the petitioner is not entitled to get the relief and dismissed the petition. The learned trial Judge has rightly quoted the judgment of Hon'ble Supreme Court in ***Vinod Kumar Vs. State of Punjab*** reported in ***2015 (1) MLJ (CrI) 288***.



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7. In the case on hand, as rightly observed by the learned trial Judge that P.W.1 to P.W.5 were examined in Chief, but they were not cross examined on that day, as the defence counsel was not present.

8. As rightly contended by the learned counsel for the petitioner, in the case on hand, the above petition was not filed for the purpose of further cross examination, but for cross examination itself. Though the petitioner is at fault for filing the petition belatedly, considering the facts and circumstances of the case and also the fact that the witnesses sought to be recalled were not at all cross examined and also taking note of the fact that the petitioner is facing trial for the offence under Section 304(A) IPC, 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.



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9. In the result, the Criminal Original Petition is allowed and the impugned order, dated 03.11.2022 in Crl.M.P.No.6908 of 2022 in C.C.No.340 of 2022 on the file of the Chief Judicial Magistrate, Sivagangai, is set aside and the petition to recall the witnesses is allowed on payment of cost of Rs.5,000/- (Rupees Five 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 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 witnesses, then he will forfeit his right to cross examine the witnesses. 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.

09.01.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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K.MURALI SHANKAR,J.

csn

To

- 1.The Chief Judicial Magistrate,
Sivagangai.
- 2.The Inspector of Police,
Sivagangai Taluk Police Station,
Sivagangai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order made in
Crl.O.P.(MD)No.23057 of 2022
and
Crl.M.P.(MD)No.16346 of 2022

Dated: 09.01.2023