



Crl.O.P.(MD)Nos.22608, 22618 and 22622 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 24.01.2023

DELIVERED ON : 06.02.2023

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)Nos.22608, 22618 and 22622 of 2022

and

Crl.M.P.(MD)Nos.15982, 15996 and 15998 of 2022

Crl.O.P.(MD)No.22608 of 2022:

Chinna Karuppasamy @ Karuppasamy

... Petitioner/Petitioner/Accused

Vs.

State through

The Sub-Inspector of Police,

Maraneri Police Station,

In Cr.No.2 of 2019,

Virudhunagar District.

... Respondent/Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order, dated 07.12.2022, passed in Cr.M.P.No.7139 of 2022 in C.C.No.64 of 2019, on the file of the Judicial Magistrate No.I, Sivakasi, Virudhunagar District and direct



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the Judicial Magistrate No.I, Sivakasi, Virudhunagar District to recall P.W.1, P.W.2, P.W.3, P.W.4, P.W.5 and P.W.8 for cross examination in C.C.NO.64 of 2019, on the file the Judicial Magistrater No.I, Sivakasi, Virudhunagar District.

Crl.O.P.(MD)No.22618 of 2022:

Chinna Karuppasamy @ Karuppasamy
... Petitioner/Petitioner/Accused

Vs.

State through
The Sub-Inspector of Police,
Sivakasi Town Police Station,
In Cr.No.4 of 2019,
Virudhunagar District. ... Respondent/Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order, dated 07.12.2022, passed in Cr.M.P.No.6550 of 2022 in C.C.No.5 of 2019, on the file of the Judicial Magistrate No.I, Sivakasi, Virudhunagar District and direct the Judicial Magistrate No.I, Sivakasi, Virudhunagar District to recall P.W.1, P.W.2, P.W.7, P.W.8, P.W.9 for cross examination in C.C.NO.5 of 2019, on the file the Judicial Magistrater No.I, Sivakasi, Virudhunagar District.



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Crl.O.P.(MD)No.22622 of 2022:

Chinna Karuppasamy @ Karuppasamy
... Petitioner/Petitioner/Accused

Vs.

State through
The Sub-Inspector of Police,
Sivakasi Town Police Station,
In Cr.No.422 of 2019,
Virudhunagar District. ... Respondent/Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order, dated 07.12.2022, passed in Cr.M.P.No.6548 of 2022 in C.C.No.7 of 2019, on the file of the Judicial Magistrate No.I, Sivakasi, Virudhunagar District and direct the Judicial Magistrate No.I, Sivakasi, Virudhunagar District to recall P.W.4, P.W.5, P.W.6, P.W.7, P.W.8, P.W.9 for cross examination in C.C.No.7 of 2019, on the file the Judicial Magistrater No.I, Sivakasi, Virudhunagar District.

For Petitioner in all cases	: Mr.S.Maya Perumal
For Respondent in all cases	: Mr.R.Sivakumar Government Advocate(Crl.Side)



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COMMON ORDER

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These Criminal Original Petitions are directed against the orders passed in Cr.M.P.No.7139 of 2022 in C.C.No.64 of 2019, in Cr.M.P.No.6550 of 2022 in C.C.No.5 of 2019 and in Cr.M.P.No.6548 of 2022 in C.C.No.7 of 2019, dated 07.12.2022, on the file of the Court of Judicial Magistrate No.I, Sivakasi, dismissing the petitions filed under Section 311 Cr.P.C.

2. The petitioner is the sole accused in all the three cases in C.C.No.64 of 2019, C.C.No.5 of 2019 and in C.C.No.7 of 2019, on the file of the Judicial Magistrate Court No.I, Sivakasi, Virudhunagar District. It is evident from the records that the petitioner is facing the trial for the offences under Sections 457, 380 and 511 I.P.C., in C.C.No.64 of 2019, under Sections 454 and 380 I.P.C., in C.C.No.5 of 2019 and for the charges under Sections 454 and 380 I.P.C., in C.C.No.7 of 2019. It is also not in dispute that in all the three cases, the prosecution evidence was completed and after the questioning under Section 313(1)(b) Cr.P.C., when the cases stood posted for defence evidence, the above petitions under Section 311 Cr.P.C., came to be filed. In C.C.No.64 of



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2019, the petitioner has sought to recall the witnesses P.W.1 to P.W.5 and P.W.8 for cross-examination and whereas in C.C.No.5 of 2019 for recalling of P.W.1, P.W.2, P.W.7 to P.W.9 and in C.C.No.7 of 2019 for recalling of P.W.4 to P.W.9 for cross-examination.

3. In all the three petitions filed under Section 311 Cr.P.C., the petitioner has canvassed a reason that since he was not able to get some particulars and some documents, he could not cross-examine the said witnesses. As rightly observed by the learned Magistrate, the petitioner has not given any particulars, which he was not able to collect earlier and the particulars of the documents required for cross-examination and the source from which he has now received the particulars and the documents.

4. At the time of enquiry, the learned Counsel for the petitioner would submit that the petitioner is restricting his prayer for recalling and cross-examining of the Village Administrative Officer and the Investigating Officer and they are not pressing their prayer with respect to other witnesses.



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5. A cursory perusal of Section 311 Cr.P.C., would show that where the evidence appeared to be essential for the just adjudication of a case, a witness could be recalled at any stage of the trial. As rightly pointed out by the learned Counsel for the petitioner, the above petitions under Section 311 Cr.P.C., came to be filed not for further cross-examination, but for cross-examination itself. As rightly contended by the learned Counsel for the petitioner, in the absence of any cross-examination, the evidence of Village Administrative Officer, who deposed about the arrest, confession and recovery and the evidence of the Investigating Officer would go un rebutted.

6. No doubt, the petitioner/accused cannot be allowed to recall and cross-examine the witnesses at his whims and fancies, but at the same time, taking note of the fair trial concept, this Court is of the view that the petitioner should be given an opportunity to cross-examine the said witnesses and if such permission is granted, as rightly contended by the learned Counsel for the petitioner, no prejudice would be caused to the prosecution and if an opportunity is granted to the petitioner/accused to



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cross-examine the said two witnesses in a time bound manner. Though the petitioner is at fault to some extent, considering the facts and circumstances 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 in three cases, 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, 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.

7. In the result, all the Criminal Original Petitions are partly allowed and the impugned orders passed in Cr.M.P.No.7139 of 2022 in C.C.No.64 of 2019, in Cr.M.P.No.6550 of 2022 in C.C.No.5 of 2019 and in Cr.M.P.No.6548 of 2022 in C.C.No.7 of 2019, on the file of Judicial Magistrate Court No.I, dated 07.12.2022, are set aside, with respect to the witnesses P.W.3 and P.W.8 in C.C.No.64 of 2019, P.W.7 and P.W.9



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in C.C.No.5 of 2019 and P.W.4 and P.W.8 in C.C.No.7 of 2019 and the petitions to recall to call the said witnesses are allowed on payment of costs of Rs.5,000/-each (totally Rupees Fifteen thousand only) to the credit of **to the credit of Government of Tamil Nadu, Chief Minister Public Relief Fund (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 witness and on further condition that the petitioner's side should cross-examine the witness whenever the witness is 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 three weeks from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petitions are closed.

06.02.2023

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

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1. The Judicial Magistrate No.I, Sivakasi,
Virudhunagar District.
2. The Sub-Inspector of Police,
Maraneri Police Station,
Virudhunagar District.
3. The Sub-Inspector of Police,
Sivakasi Town Police Station,
Virudhunagar District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY ORDER MADE IN

**Crl.O.P.(MD)Nos.22608, 22618 and 22622 of 2022
and
Crl.M.P.(MD)Nos.15982, 15996 and 15998 of 2022**

06.02.2023