



Crl.O.P.(MD)No.22754 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 09.02.2023

DELIVERED ON : 28.02.2023

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.22754 of 2022

and

Crl.M.P.(MD)No.16107 of 2022

Rajesh Ravichandran

... Petitioner/Accused No.1

Vs.

The Inspector of Police,
Sawyerpuram Police Station,
Thoothukudi District.
(Crime No.179 of 2013).

... Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to Crl.M.P.No.2059 of 2022, dated 12.12.2022 in S.C.No.78 of 2017, on the file of the learned II Additional Sessions Judge, Thoothukudi and set aside the same.



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Crl.O.P.(MD)No.22754 of 2022

For Petitioner : Mr.S.M.A.Jinnah

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

ORDER

This Criminal Original Petition filed under Section 482 Cr.P.C., is directed against the order passed in Crl.M.P.No.2059 of 2022 in S.C.No. 78 of 2017, dated 12.12.2022, on the file of II Additional District and Sessions Court, Thoothukudi in dismissing the petition filed under Section 311 Cr.P.C.

2. The petitioner is the first accused in S.C.No.78 of 2017, on the file of II Additional District and Sessions Court, Thoothukudi. Admittedly, the petitioner, who is the first accused and five other accused are facing trial for a murder case and the charges were framed against the petitioner/first accused for the offences under Section 302 r/w 109 and 120-B I.P.C. It is also not in dispute that 24 witnesses have already been examined, that P.W.24 – Investigating Officer was



Crl.O.P.(MD)No.22754 of 2022

examined in chief and cross-examined on 29.03.2022, that the accused were questioned under Section 313(1) (b) Cr.P.C., and that when the case stood posted for defence evidence, the above petition came to be filed under Section 311 Cr.P.C., seeking orders to recall P.W.24 for further cross-examination. The prosecution has raised serious objections to recall P.W.24. The learned Sessions Judge, after enquiry, has passed an elaborate order dismissing the said petition vide order dated 12.12.2022. Aggrieved by the said order of dismissal, the first accused has come forward with the present petition.

3. In the petition filed under Section 311 Cr.P.C., by the petitioner/first accused, he has stated that he has been falsely implicated in the present case by the respondent police with the inducement of vested interest with the help of the police during the time of active participation of the petitioner in the politics, that though the petitioner was absolutely innocent and not guilty of any offence, he was implicated in the above case as the first accused with concocted story as if the deceased Gnanatheebam Parimalavalli was having enmity in the alleged diocese election and that therefore, P.W.24 has to be further cross-



Crl.O.P.(MD)No.22754 of 2022

examined with material questions relating to the foisting of false case
against the petitioner.

4. The learned Counsel for the petitioner would submit that after the examination of P.W.24 – Investigating Officer before the trial Court, the petitioner/first accused had phone conversation with P.W.24, that P.W.24 had admitted that the petitioner was implicated in the above case as per the instructions of the higher officials, that P.W.24 has also admitted that two other cases in S.C.No.127 of 2018, S.C.No.137 of 2016 were also foisted against him falsely and that therefore, P.W.24 has to be recalled and cross-examined with regard to the above aspects and more importantly that the petitioner was falsely implicated in the case on hand. The petitioner has produced the contents of the alleged phone conversation between the petitioner and P.W.24.

5. Admittedly, the petitioner has not furnished any particulars as to who had contacted the other, cell phone numbers involved, duration of the calls, the time and the cell phone from which the same was recorded. As rightly contended by the learned Additional Public Prosecutor, the



Crl.O.P.(MD)No.22754 of 2022

above aspects now canvassed by the learned Counsel for the petitioner does not find place in the petition filed under Section 311 Cr.P.C., and more over, the same does not find place in the impugned order. It is not the case of the petitioner that the said aspects were brought to the notice of the trial Judge, but the same was not considered.

6. As rightly pointed out by the learned Additional Public Prosecutor, after the completion of the chief examination and cross-examination of P.W.24, there is absolutely no explanation as to what was the purpose or need for the petitioner to contact P.W.24 and to have such conversation with him. It is not the case of the petitioner that after such phone conversation, he had immediately informed the same to the trial Court or to the higher police officials for taking action against P.W. 24 and other police officials allegedly referred by P.W.24. Even assuming for arguments sake that the petitioner and P.W.24 had such phone conversation between them, that by itself is not sufficient enough to recall P.W.24 to question about the contents of the conversation.



Crl.O.P.(MD)No.22754 of 2022

7. As rightly pointed out by the learned Additional Public Prosecutor, in paragraph 5 of the Criminal Original Petition, the petitioner has sought to recall P.W.24 so as to enable his Counsel to further cross-examine with regard to the other falsely foisted case in S.C.No.127 of 2018 and S.C.No.137 of 2016. Admittedly, the case in S.C.No.127 of 2018 was already disposed of on 19.11.2019 and the case in S.C.No.137 of 2016 was disposed of on 23.10.2017.

8. The learned Sessions Judge, in the impugned order, has specifically observed that the above documents were obtained by the petitioner in March 2022, as the same were delivered to his Counsel on 19.03.2022. Considering the above, when P.W.24 was examined on 29.03.2022, the said documents were very much available with the petitioner/accused and the petitioner has not offered any reason or any explanation for not cross-examining P.W.24 with respect to the said documents, ie., the judgments passed in S.C.No.127 of 2018 and S.C.No. 137 of 2016. No doubt, the petitioner was acquitted in those two cases, but that by itself will not take us to infer that the case on hand was falsely foisted against him.



Crl.O.P.(MD)No.22754 of 2022

WEB COPY

9. It is not the case of the petitioner that in the judgments pronounced in the above two cases, there was a specific observation by the Court that those two cases were foisted against the petitioner falsely. As rightly contended by the learned Additional Public Prosecutor, even assuming that P.W.24 has given some admissions in the phone conversation, that by itself is not sufficient to upset the trial which was almost concluded and there is every possibility of having such a conversation and that too, after cross-examination of P.W.24 due to their collusion. Except the above, the petitioner has not canvassed any other reason or ground for recalling P.W.24 for further cross-examination.

10. Considering the above, the finding of the trial Court that the above petition came to be filed only to protract the proceedings and that therefore, the petitioner is not entitled to get the relief claimed, cannot be found fault. Consequently, this Court concludes that the Criminal Original Petition is devoid of merits and the same is liable to be dismissed.



Crl.O.P.(MD)No.22754 of 2022

11. In the result, the Criminal Original Petition is dismissed.

Consequently, the connected Miscellaneous Petition is also dismissed.

28.02.2023

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

1. II Additional Sessions Court, Thoothukudi
2. The Inspector of Police,
Sawyerpuram Police Station,
Thoothukudi District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.O.P.(MD)No.22754 of 2022

K.MURALI SHANKAR,J.

SSL

PRE-DELIVERY ORDER MADE IN

Crl.O.P.(MD)No.22754 of 2022

28.02.2023