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Crl.O.P.(MD)No.21574 of 2023



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **30.11.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **G.ILANGO VAN**

Crl.O.P.(MD)No.21574 of 2023

and

Crl.M.P.(MD).No.16866 of 2023

Selvakumar

... Petitioner/Petitioner/1st Accused

Vs.

State Rep.by its
The Inspector of Police,
Malli Police Station,
Malli.
Virudhunagar District.

...Respondent/Respondent/Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records in Crl.M.P. No.10501 of 2023 in C.C.No. 582 of 2020 on the file of the learned Judicial Magistrate Court No.2, Srivilliputhur, Virudhunagar District, dated 20.11.2023 and set aside the same and consequently direct the learned Judicial Magistrate Court No.II, Srivilliputhur, Virudhunagar District, to recall the witnesses for cross examination namely P.W.1 to P.W.8 and P.W.10 to P.W.12.

For Petitioner : Mr.S.M.Anatha Murugan

For Respondent : Mr.M.Vaikkam Karunanithi
Government Advocate (Crl.side)



ORDER

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This Criminal Original Petition is filed to call for the records in Crl.M.P. No.10501 of 2023 in C.C.No.582 of 2020 on the file of the learned Judicial Magistrate Court No.2, Srivilliputhur, Virudhunagar District, dated 20.11.2023 and set aside the same and consequently direct the learned Judicial Magistrate Court No.II, Srivilliputhur, Virudhunagar District, to recall the witnesses for cross examination namely P.W.1 to P.W.8 and P.W.10 to P.W.12.

2. The petitioner is facing charges under Sections 120B, 403, 406 and 420 IPC before the concerned trial Court. The above said Calender Case is of the year 2020 and the crime is of the year 2019. When the trial commenced on the side of the prosecution, all the witnesses were examined in chief. On the date of chief examination of prosecution side witnesses, the petitioner failed to cross examine the witnesses. After completion of the evidence, the petitioner filed an application seeking recall of P.W.1 to P.W.8 and P.W.10 to P.W.12 by filing Cr.M.P. No.10501 of 2023 in C.C.No.582 of 2020. Considering the attitude of the petitioner in showing his lethargic attitude, the above said recall application came to be dismissed, by the order dated 20.11.2023. Challenging the above said order, this petition has been filed.



3. The learned counsel for the petitioner would submit that on the date of chief examination of witnesses, the petitioner's Advocate did not cross examine the witnesses, for no reason, he failed to cross examine the witnesses, is not known to the petitioner. Even though the petitioner is represented by the Advocate, he failed for unknown reasons. For that, the petitioner should not be penalised. On that ground only, he filed the application before the learned Judicial Magistrate Court No.II, Srivilliputhur, Virudhunagar District, seeking recall of P.W.1 to P.W.8 and P.W.10 to P.W.12 by filing Cr.M.P. No.10501 of 2023 in C.C.No.582 of 2020 by engaging another Advocate.

4. Now the objection made by the prosecution is that because of lethargic attitude of the petitioner only, the trial could not be completed. Now the case is posted for judgement. At this stage only, this petition came to be filed. Only due to lethargic attitude on the side of the petitioner, the application in Cr.M.P. No.10501 of 2023 in C.C.No.582 of 2020 came to be dismissed.

5. But the fact remains, the petitioner is facing serious charges under Sections 120B, 403, 406 and 420 IPC. Without examining the material witnesses, a fair justice may not be possible. Only on the sole



ground, this petition is allowed to recall P.W.1 to P.W.8 and P.W.10 to P.W.12 on payment of cost of Rs.2,500/- each. Let the cost be paid to the above said witnesses within a week, either directly or to be deposited in the trial Court. On payment, the trial Court shall fix the dates for recall P.W.1 to P.W.8 and P.W.10 to P.W.12 in a scheduled manner for further cross examination. The petitioner must cross examine the P.W.1 to P.W.8 and P.W.10 to P.W.12 on that dates, without fail. If any failure is noticed on the part of the petitioner, his further right will be forfeited forever.

6. With the above said conditions, the orders of dismissal in Cr.M.P(MD) No.10501 of 2023 in C.C.No.582 of 2020 is set aside and this Criminal Original petition stands allowed. Consequently, connected Miscellaneous Petition is closed.

30.11.2023

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

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To

- 1.The Judicial Magistrate Court No.II,
Srivilliputhur, Virudhunagar District.
- 2.The Inspector of Police,
Malli Police Station,
Malli.
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN. J.

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