



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P No.1606 of 2024
and CRL.M.P No.1116 of 2024

Maruthamani

...Petitioner

Vs.

The State Rep. by its
The Sub Inspector of Police,
Gangavalli Police Station,
Salem District

...Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order passed in Crl.M.P.No.3 of 2024 in C.C.No.37 of 2017 on 01.01.2024 on the file of the Judicial Magistrate No.II, Attur consequently recall the prosecution witnesses PW1 to PW9 and allow the petitioner to cross examine them.

For Petitioner : Mr.T.Ganesan

For Respondent : Mr.A.Gopinath
Government Advocate

ORDER

This criminal original petition has been filed challenging the order passed by the Court below in Crl.M.P.No.3 of 2024 in C.C.No.37 of 2017 dated



12.01.2024, dismissing the application filed by the petitioner under Section 311 of Cr.P.C., to recall PW1 to PW9 for cross-examination.

2. Heard the learned counsel for the petitioner and the learned Government Advocate appearing on behalf of the respondent.

3. The petitioner is facing trial before the Court below for offence under Sections 457 and 380 of IPC. The prosecution examined PW1 to PW9 and none of these witnesses were cross-examined on the side of the petitioner. The case was at the stage of questioning under Section 313 of Cr.P.C. At that stage, the petitioner filed the present application under Section 311 of Cr.P.C., to recall PW1 to PW9 for cross-examination. The Court below did not find any merits in this application and accordingly, the same was dismissed. Aggrieved by the same, the present criminal original petition has been filed before this Court.

4. In the considered view of this Court, the petitioner is facing serious charges before the Court below. Unfortunately, none of the witnesses who were examined on the side of the prosecution were cross-examined by the petitioner. The examination of the prosecution witnesses had taken place during the period between 31.03.2023 to 04.12.2023. The petitioner cannot be permitted to recall



every other witnesses and hence, this Court directed the learned counsel for the petitioner to point out the important witnesses who should be cross-examined on the side of the petitioner. Accordingly, the learned counsel for the petitioner pointed out PW1, PW2, PW7, PW9 as the witnesses to be recalled for cross-examination.

5.The learned Government Advocate appearing on behalf of the respondent submitted that the petitioner was absconding and hence, non-bailable warrant was issued. Thereafter, the petitioner filed an application for recalling the non-bailable warrant and the proceedings are being dragged on from the year 2017 onwards. The learned Government Advocate submitted that there is absolutely no ground to interfere with the order passed by the Court below. That apart, it was also submitted that the case is now at the stage of final arguments.

6.Taking into consideration the facts and circumstances of the case and the submissions made on either side, this Court is inclined to interfere with the order passed by the Court below partly insofar as recalling some of the important witnesses for cross-examination. This is in view of the fact that the petitioner is facing serious charges. However, this Court wants to put the petitioner on terms.

7.In the light of the above discussion, the order passed in CrI.M.P.No.3 of



2024 in C.C.No.37 of 2017 dated 12.01.2024, is partly set aside. There shall be a direction to the Court below to recall PW1, PW2, PW7 and PW9 for cross-examination. The petitioner shall pay a cost of Rs.2500 to each of these witnesses. These witnesses shall be cross-examined on the same day they appear before the Court. If for any reasons, the petitioner fails to cross-examine the witnesses on the day of their appearance, the petitioner will lose his right to recall the witnesses in future.

8. In the result, this criminal original petition is partly allowed and there shall be a direction to the Court below to complete the proceedings in C.C.No.37 of 2017, within a period of three months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed.

30.01.2024

Index: Yes/No
Speaking order/Non-speaking Order
Neutral Citation: Yes/No
ssr

Note: Issue order Copy on 02.02.2024

To



1.The Judicial Magistrate No.II, Attur.

2.The Sub Inspector of Police,
Gangavalli Police Station,
Salem District.

3.The Public Prosecutor,
High Court, Madras.



WEB COPY



N.ANAND VENKATESH, J

SSR

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