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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

**CRL.OP No.6757 of 2023
and Crl.MP.No.4253 of 2023**

Balakrishnan

..Petitioner/ Accused

.Vs.

Gajapathi Rao

..Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records and set aside the order made in Crl.MP.No.724 of 2023 in C.C.No.336 of 2000 dated 22.02.2023 passed by the learned District Munsif Cum Judicial Magistrate, Kattumannarkoil, Cuddalore District.

For Petitioner : Mr.G.Pugazhenthir

For Respondent : Mr.K.Murugan

ORDER

This petition has been filed challenging the order passed by the Court below dismissing the application filed under Section 311 Cr.PC., to recall PW.1 to PW.5 for cross examination in Crl.MP.No.724 of 2023 in C.C.No.336 of 2000, dated 22.02.2023.



2. When the matter came up for hearing on 29.3.2023, this Court passed the following order:

This petition has been filed to call for the records and set aside the order made in CrI.M.P.No.724 of 2023 in C.C.No.336 of 2000 dated 22.02.2023 passed by the learned District Munsif Cum Judicial Magistrate, Kattumannarkoil, Cuddalore District.

2. The learned counsel for the petitioner submitted that charges framed against the petitioner shows that, petitioner was asked even on the date of framing of charges, as to whether, he wanted to further cross examine PW1 to PW5, who were already cross examined. In answer to this, it is recorded that the accused had informed that, he did not want to further cross examine PW1 to PW5. He further submitted that the procedure followed by the learned Magistrate is contrary to Section 246 of Cr.P.C. As per this section, after the charges are framed, if the accused refuses to plead, or does not plead or claims to be tried or if the accused is not convicted, he shall be required to state, at the commencement of the next hearing of the case or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith whether he wishes to cross-examine any, and if so, which, of the witnesses for the prosecution whose evidence has been taken. He further submitted that learned Magistrate has not recorded any reason for asking the accused forthwith as to whether he wanted to further cross examine PW1 to PW5. Therefore present petition is filed.



3. In the light of the submission made by the learned counsel for the petitioner, learned District Munsif Cum Judicial Magistrate, Kattumannarkoil, Cuddalore is directed to produce the relevant records including the questioning of the accused under Section 264 of Cr.P.C with answers and charges, to this Court within a period of two weeks from the date of receipt of copy of the order.

4. Registry is directed to send the copy of this order immediately for compliance by the learned Magistrate.

5. Post the matter on 12.04.2023. There shall be an order of interim stay of further proceedings in C.C.No.336 of 2000 till then.

2.Pursuant to the above order, a report has been sent by the learned District Munsif cum Judicial Magistrate, Kattumannarkoil, dated 29.01.2024, along with all the relevant records.

3.On going through the report and the papers that have been placed before this Court, it is seen that on 10.01.2023, the charges were framed against A1 to A3, A6 and A7 under Section 246 (2) Cr.PC. The accused persons were questioned on the charges framed against them and they replied that it was a false charge. On the very same day, the Court had also asked the accused persons whether they want to cross examine the witnesses and a reply was given to the effect that there was no need to cross examine the



questioning under Section 313 Cr.PC.

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4. Heard Mr.G.Pugazhenth, learned counsel for the petitioner and Mr.K.Murugan, learned counsel for the respondent.

5. The short issue that arises for consideration in the present case is with regard to the scope of Section 246(4) Cr.PC. For proper appreciation, the same is extracted hereunder:

246. Procedure where accused is not discharged

(1).....

(2).....

(3).....

(4) If the accused refuses to plead, or does not plead or claims to be tried or if the accused is not convicted under Sub-section(3), he shall be required to state, at the commencement of the next hearing of the case, or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith, whether he wishes to cross-examine any, and, if so, which, of the witnesses for the prosecution whose evidence has been taken.

6. A plain reading of the above provision shows that where the accused person refuses to plead guilty and denies the charges, the question as to whether he wants to cross examine any of the prosecution witnesses, should not be put on the very same day when the Court complies with the

requirement under Section 246(2) Cr.PC and 246(3) Cr.PC. The Court is



expected to question the accused persons only during the next date of hearing as to whether the accused persons wishes to cross examine any of the witnesses for the prosecution whose evidence has been taken. This requirement is mandated since sometime must be given to the accused person to think over and decide as to whether he wants to cross examine the witnesses for the prosecution. This question cannot be posed on the same day when the accused person refuses to plead guilty and also denies the charges.

7.The Court below failed to take note of this requirement that has been stipulated under Section 246(4) Cr.PC. In view of the same, the order passed by the Court below in CMP.No.724 of 2023, dated 22.02.2023, is hereby set aside.

8.The Court below is directed to recall PW.1 to PW.5 and fix a date for their cross examination. On the date of their appearance, the witnesses shall be cross examined on the side of the petitioner. If for any reason, the witnesses are not cross examined on the date of their appearance, the petitioner will lose their right to recall the witnesses in future.

9.The calender case was instituted in the year 1998 and it continues to be pending for more than two decades. Therefore, this Court is inclined to fix a time limit for the completion of proceedings.



10.In the result, this criminal original petition is allowed and there shall be a direction to the Court below to complete the proceedings in C.C.No.336 of 2000, within a period of **three months** from the date of receipt of copy of the order. A compliance report shall also be filed before this Court. Consequently, connected miscellaneous petition is closed.

01.02.2024

Speaking Order
Index: Yes
Internet: Yes
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To

1.District Munsif Cum Judicial Magistrate,
Kattumannarkoil, Cuddalore District.



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N.ANAND VENKATESH.J.,

kp

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