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CrI.O.P.No.8858 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.O.P.No.8858 of 2024

R.Ayappan,
S/o.Ramu,
Main Road, Thittakudi,
Cuddalore District.

... Petitioner/Accused

/versus/

The State Rep.by
The Inspector of Police,
Thittakudi Police Station,
Thittakudi, Cuddalore District.

... Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records and set aside the order of dismissal in CrI.M.P.No.160 of 2023 dated 07.02.2024 passed by the Learned Additional Sessions Judge, Thittakudi and further order to recall the witness of P.W.1 for cross examination in S.C.No.29 of 2018 pending on the file of Learned Additional Sessions Judge, Thittakudi.

For Petitioner : Mr.P.Muthamizhselvakumar

For R1 : Mr.K.M.D.Muhilan
Government Advocate (CrI.Side)



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ORDER

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The petitioner herein is the sole accused in S.C.No.29 of 2018.

Now, the trial is posted for examining the Investigating Officer on 15.04.2024.

At this juncture, the petitioner has filed an application under Section 311 of Cr.P.C., to recall P.W.1 who has deposed before the trial Court on 05.04.2022.

The application to recall P.W.1 was dismissed by the trial Court stating that the application is filed after 20 months of the chief examination. In the meanwhile, several witnesses been examined and the matter is posted for cross examination of Investigating Officer.

2. The present petition is filed at the fag-end of the trial to protract the case. If the request of the petitioner is allowed, the witness P.W.1 will be unnecessarily dragged to the Court. Hence, following the decision of the Hon'ble Supreme Court in *Vinoth Kumar -vs- State of Punjab* reported in **2015 (2) SCC 220**, the trial Court has dismissed the petition stating that in spite of opportunity given to the accused person, he has failed to cross examine the witness on the same day of chief examination and therefore, his application is liable to be dismissed.



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3. The Learned Counsel appearing for the petitioner submitted that

except P.W.1, all other witness on the side of the prosecution were cross examined on the same day without any delay. When P.W.1 was examined, his Counsel was not well and therefore, the accused sought time for cross examining the witness. However, the trial Court declined to grant time and closed the evidence of P.W.1 and therefore, to afford fair opportunity, the petitioner must be permitted to recall P.W.1, the defacto complainant and cross examine him.

4. This Court finds that it is a case of threatening the witness for giving a complaint against the petitioner herein and P.W.1 is the defacto complainant who had been threatened by the petitioner. The antecedent of the petitioner has warranted the trial Court not to entertain his petition to recall P.W.1. However, on considering the fact that on the day when P.W.1 was present and the chief examination was recorded, the petitioner/accused had no advantage of Legal Assistance since, his Counsel was not well. Stating his Counsel illness, petitioner he has sought time to cross examine the witness, but the Court has declined to grant time.



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5. This Court has perused the evidence of few of the prosecution witnesses and find that some of them have turned hostile, the reason is very obvious. Hence, in view of the above fact, this Criminal Original Petition is allowed on condition that the petitioner/accused should cross examine the P.W.1 on the day when she is present and should not take any adjournment. Further, the trial Court shall always take note of the fact that the witness been recalled after 20 months for cross examination and this fact must be taken note off while appreciating the evidence.

6. The Learned Government Advocate (Crl.Side) appearing for the respondent states that the next hearing date i.e., 15.04.2024 is for cross examination of Investigating Officer. Therefore, P.W.1 shall also be summoned on that day for cross examination. The petitioner shall complete the cross examine P.W.1 on 15.04.2024 without fail. If he fails to avail this opportunity, no further opportunity will be given.

7. With the above observation, this ***Criminal Original Petition is allowed.***

10.04.2024



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Index : Yes/No.

Neutral Citation : Yes/No.

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Copy to:

1. The Additional Sessions Judge, Thittakudi
2. The Inspector of Police, Thittakudi Police Station,
Thittakudi, Cuddalore District.
3. The Public Prosecutor, High Court of Madras, Chennai.



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Dr.G.JAYACHANDRAN,J.

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