



CrI.O.P. No. 22769 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2024

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THE HON'BLE MR. JUSTICE M. NIRMALKUMAR

CRIMINAL ORIGINAL PETITION No. 22769 of 2024

&

CRL.M.P. No. 12932 of 2024

Murugesan

..Petitioner

Vs.

State rep. by
The Inspector of Police,
Kamanaickenpalayam Police Station,
Tiruppur District.
(Cr. NO. 11/2018)

..Respondent

Prayer: Criminal Original Petition to call for the records relating to the order dated 27.08.2024 passed in C.M.P. N. 4259 of 2024 in C.C. No. 93 of 2018 on the file of Judicial Magistrate Court, Palladam and set aside the same.

For Petitioner :: Mr.S. Sriram

For Respondent :: Mr.S. Udayakumar
Govt. Advocate (Crl.Side)



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ORDER

The petitioner/accused in C.C. No. 93 of 2018 on the file of the Judicial Magistrate Court, Palladam, who is facing trial for the offences under Sections 279 and 304A IPC had filed a petition in C.M.P. No. 4259 of 2024 under Section 311 of The Code of Criminal Procedure ('Cr.P.C.' in short)/Section 348 BNSS Act seeking to recall P.W.s 1, 2 and 5, who have not been cross-examined on the side of the defence. By order dated 27.08.2024, the said petition came to be dismissed for the reason that the calendar case being of the year 2018, the petition to recall has been filed after considerable delay. Challenging the said order, the present criminal original petition has been filed.

2. The contention of the learned counsel for the petitioner is that the calendar case pertains to a road accident. The petitioner is a driver by profession and on the date of occurrence, the two-wheeler, i.e., TVS 50 bearing Registration No. TN 39 Q 7827, which was coming in the opposite direction, had violated traffic regulations and had been the cause for the accident. However, since the petitioner was driving a heavier vehicle, he



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has been falsely implicated in this case. The petitioner, as a Driver, has to travel to various places and hence, he lost track of the case in the year 2023.

The accident had taken place in the year 2018 and charge sheet was filed in the same year. However, the petitioner did not appear before the Court till 2023 and on 19.06.2023, non-bailable warrant was issued for petitioner's absence. Thereafter, the petitioner was secured and remanded to judicial custody on 30.07.2024. The petitioner filed a bail application in C.M.P. No. 1595 of 2024. Though both the offences, namely, offences under Section 279 and 304 A IPC are bailable offences, the Trial Court dismissed the bail application for the reason that the calendar case was pending for more than 5 years. Learned counsel for the petitioner further submitted that today, this Court, in Crl.O.P. No. 22548 of 2024, has granted bail to the petitioner. It is an admitted position that the petitioner had not cross-examined P.W.s 1, 2 and 5. P.W.1 is an eye-witness to the occurrence; P.W.2 is an inquest witness and P.W.5 is a witness to the Observation Mahazar prepared. Hence, according to the learned counsel for the petitioner, they have to be necessarily cross-examined to putforth the defence of the petitioner.

3. Learned Government Advocate (Crl.Side) submitted that P.W.s 1 and 2 were examined on 05.06.2023. On that day, no cross-examination was conducted. Thereafter, from 19.06.2023, for the absence of the



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petitioner, non-bailable warrant was issued. The non-bailable warrant was executed on 30.07.2024 with sustained follow-up. P.W.5 was examined on 13.08.2024 but the petitioner had not cross-examined P.W.5 on that day. Learned Government Advocate (Crl.Side) would fairly submit that his only objection is that the presence of the petitioner for the trial to be ensured and that the trial itself could be completed within a short period.

4. Considered the rival submissions and perused the materials on record.

5. This Court finds that the dismissal of the bail application of the petitioner for bailable offences is not proper. It is brought to the notice of this Court that today, bail has been granted to the petitioner in Crl.O.P. No. 22548 of 2024. It is the admitted position that P.W.s 1, 2 and 5 have not been cross-examined by the petitioner. The evidence would be complete only on testing the evidence of witnesses by cross-examination.

6. Hence, this Court is inclined to allow this criminal original petition. The order dated 27.08.2024 passed by the learned Judicial Magistrate, Palladam, is set aside. The Trial Court is directed to permit the



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petitioner to cross-examine P.W.s 1, 2 and 5 and on their presence, the petitioner shall cross-examine them. The petitioner shall begin and conclude

M. NIRMALKUMAR,J.

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the cross-examination on the very same day without any further delay. The costs to be paid to the witnesses shall be fixed by the Trial Court.

7. The criminal original petition stands allowed with the above directions. Connected miscellaneous petition is closed.

18.09.2024

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To

1. The JM Court, Palladam.
2. The Inspector of Police,
Kamanaickenpalayam Police Station,

Tiruppur District.
3. The Public Prosecutor,
High Court, Madras.

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