



WEB COPY



Crl.O.P.No.26199 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2024

CORAM

THE HONOURABLE Dr.JUSTICE **G.JAYACHANDRAN**

Crl.O.P.No.26199 of 2024

Muthu

... Petitioner

Vs.

1.The State Rep by its,
The Inspector of Police
Tiruvarur Taluk Police Station,
Tiruvarur.
(Crime No. 120/2023)

... Respondent

Prayer: Criminal Original Petition is filed under Section 528 BNSS, pleaded to set aside the order in Crl.MP.No. 495 of 2024 in C.C.No. 109 of 2024 dated 10.09.2024 passed by the Leaned Judicial Magistrate (Addl Mahila) at Thinivarur.

For Petitioner : Mr.G.Saravananbhavan

For Respondent : Mr.K.M.D.Muhilan
Government Advocate (Crl.Side)

ORDER

The petitioner is a sole accused in C.C.No.109 of 2024. He has filed an application under Section 311 Cr.P.C., to recall PW.2, the eye witness to the occurrence on the ground that cross examination of PW.2



CrI.O.P.No.26199 of 2024

was incomplete and stopped due to poor light. Hence he has to be recalled. However, the trial Court has dismissed the application stating that PW.2 been cross examined extensively and in the light of the judgment of the Hon'ble Supreme Court in *Vinodkumar Vs. State of U.P.*, witnesses has to be cross examined on the same day of chief examination and therefore, application under Section 311 Cr.P.C., cannot be entertained.

2. The perusal of the deposition of PW.2 indicates that the cross examination not completed and the Court has not recorded that cross examination completed and no re-examination. Apparently the cross examination has stopped abruptly and probably due to poor light as contended by the petitioner. Further, the eye witness to the occurrence except few question, the other aspects not been questioned by the petitioner herein. Whereas, the trial Court has observed that the witness has cross examined extensively which is factually incorrect. Hence the petition to set aside the order of the trial Court is allowed. The petitioner is permitted to cross examine PW.2 on the date of his appearance. For the said purpose, the trial Court shall summon PW.2 and permit the



CrI.O.P.No.26199 of 2024

petitioner herein to further cross.

WEB COPY

3. With this direction, this Criminal Original Petition is allowed.

23.10.2024

rpl

To

1.The Judicial Magistrate (Addl Mahila), Thinivarur.

2.The Inspector of Police
Tiruvarur Taluk Police Station,
Tiruvarur.

3.The Public Prosecutor,
High Court of Madras,
Chennai.



Crl.O.P.No.26199 of 2024

Dr.G.JAYACHANDRAN,J.

rpl

Crl.O.P.No.26199 of 2024

23.10.2024