



Crl.O.P.No.27520 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2024

CORAM

THE HONOURABLE MR.JUSTICE **M. NIRMAL KUMAR**

Crl.O.P.No.27520 of 2024

and

Crl.M.P.No.15236 of 2024

Pushparani

... Petitioner/Accused

Vs.

The Inspector of Police,
Ranipet Police Station,
Ranipet.
Crime No.1372 of 2020.

... Respondent

Prayer: Criminal Original Petition is filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 praying to set aside the order passed in C.M.P.No.436 of 2024 in S.C.No.133 of 2024 on the file of learned Principal District and Sessions Judge, Ranipet, Ranipet District.

For Petitioner : Mr.S.Suresh

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



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ORDER

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This Criminal Original Petition has been filed seeking to set aside the order passed in C.M.P.No.436 of 2024 in S.C.No.133 of 2024 on the file of learned Principal District and Sessions Judge, Ranipet, Ranipet District.

2.The petitioner/accused in S.C.No.133 of 2024 filed a recall petition under Section 311 of Cr.P.C. in CrI.M.P.No.436 of 2024. The trial Court by order dated 18.10.2024 dismissed the petition, against which, the present criminal original petition is filed.

3.The contention of the learned counsel for petitioner is that the petitioner was charged for offence under Sections 364 and 302 of I.P.C. as though she had committed the murder of her sister-in-law's daughter by drowning. The petitioner was unable to engage any counsel of her choice due to her poverty. Thereafter, Legal Aid Counsel appointed and the case proceeded. Petitioner's husband was a driver by profession, now he is without employment due to his both limbs got paralysed. His daughter, who had now grown up studying III year college and her part



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time employment is only source of income. On enquiry, it was found that none of the witnesses examined. When questioned about the same with the legal aid counsel he was unable to give any proper reply and refused to hand over case bundle. Thereafter a memo filed before the trial Court putting forth the entire facts. But the trial Court failed to furnish the copies. With great difficulty the present counsel was engaged on 20.05.2024 and immediately thereafter the recall petition filed on 10.06.2024 before the Magalir Neethimandram, Fast Track Mahila Court at Vellore, wherein the case was originally pending trial in S.C.No.156 of 2021. In the meanwhile the district was bifurcated and on administration ground the case was transferred to the Principal Sessions Court, Ranipet and the same was taken on file as S.C.No.133 of 2024. Hence, the delay is due to the previous legal aid counsel not discharging his duties as accepted and further due to Corona and bifurcation of the District.

4.He further submitted that petitioner is facing a capital punishment and it is a case of circumstantial evidence, each witness place an important role and each link has to be tested by way of cross examination to prove the veracity of the evidence of the witness. In view



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of the above, all witnesses PW1 to PW21 to be recalled and the petitioner is ready to cross examine the witnesses without any further delay within a stipulated time frame. The entire witnesses can be recalled and the cross examination can be completed without further delay.

5.The learned Government Advocate (Crl. Side) on the other hand opposed the petitioner's contention submitting that the petitioner not cross examined any of the witnesses. The petitioner earlier defended by a legal aid counsel, who had not discharged his duty and thereafter they engaged a private counsel and filed the above petition. In this case, the trial commenced, PW1 examined on 22.07.2022 and periodically witnesses examined and the investigating officer finally examined on 18.07.2023. It is almost a year the trial has to be proceeded, witnesses produced but the petitioner failed to cross examine any of the witnesses. Now recalling and allowing the witnesses to be cross examined would amount to second trial, which is not permissible. He fairly submitted that it is a case of circumstantial evidence and the petitioner facing capital punishment is also not denied.



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6.Considering the submissions made and on perusal of the materials it is seen that petitioner is facing capital punishment. It is the case of circumstantial evidence, wherein each of the witnesses played a role connecting the petitioner's overt act to the murder. Unless the witnesses are tested by cross examination, it cannot be concluded that the evidence is acceptable and taken it to be a fact of approving the case. Since the petitioner is facing capital punishment and earlier defended by legal aid counsel, who had not discharged the professional duty cast upon him, for which the petitioner cannot be blamed and made to suffer. Now the petitioner had given an undertaking to cross examine the witnesses as and when they are appearing, without further delay. Learned Government Advocate submitted that witnesses are available and they can be produced without delay.

7.In view of the above, the order passed by the learned Principal Sessions Judge, Ranipet in Crl.M.P.No.436 of 2024 in S.C.No.133 of 2024 dated 18.10.2024 is set aside. The trial Court is directed to recall the witnesses PW1 to PW15 and PW17 to PW21 by charting out a time frame, grouping the witnesses for cross examination. This said entire



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M. NIRMAL KUMAR, J.

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exercise to be completed within a period of three months from the date of receipt of a copy of this order.

8. Accordingly, the Criminal Original Petition is allowed.

Consequently, connected criminal miscellaneous petition is closed.

30.10.2024

Index : Yes/No

Internet: Yes/No

Neutral Citation : Yes/No

Speaking order/Non-speaking order

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To

1. The Inspector of Police,
Ranipet Police Station, Ranipet.
2. The Principal District and Sessions Judge,
Ranipet, Ranipet District.
3. The Public Prosecutor,
High Court of Madras, Chennai.

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