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Crl OP No.28956 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.No.28956 of 2023

Jayabal

...Petitioner/Accused

Vs.

The Inspector of Police,
PEW- Virudhachalam Police Station,
Cuddalore District.

...Respondent /Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the order passed in Crl MP No.70 of 2023 in SC No.331 of 2022 on the file of the Additional Sessions Judge, Tittagudi dated 08.08.2023 and subsequently, set aside the same.

For Petitioner : Mr.K.Karuppaiyamoopnar

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

This Criminal Original petition has been filed challenging the order passed by the Court below in Crl MP No.70 of 2023 in SC



No.331 of 2022, dismissing the application filed by the petitioner under Section 311 of Cr.PC to recall PW5 for cross-examination.

2. Heard Mr.K.Karuppaiyamoopanar, learned counsel appearing for the petitioner and Mr.A.Damodaran, learned Additional Public Prosecutor for respondent.

3. The petitioner is facing trial before the Court below for offence under Section 4(1) (aaa), 4(1-A), 14A of the Tamil Nadu Prohibition Act. The case is at the stage of trial and the investigation officer was examined as PW5 on 28.06.2023. Since the petitioner did not cross examine PW5, the evidence of PW5 was closed.

4. The petitioner filed an application under Section 311 of Cr.PC to recall PW5 for cross examination on the ground that PW5 was not cross examined due to non-availability of certain documents. This application was considered by the Court below and the Court below found that there are no sufficient reasons to recall PW5 for cross examination and accordingly, the application was dismissed. Aggrieved



by the same, the present petition has been filed before this Court.

5. In the considered view of this Court, the petitioner is facing trial for certain serious offences. The cross examination of the investigation officer becomes very vital for the petitioner to effectively defend himself in the trial. According to the petitioner, due to non-availability of Form 95 on the day when PW5 was examined in chief, the petitioner was not able to cross-examine PW5. The Court below has given a finding to the effect that the petitioner did not seek for any deference of cross-examination and the petitioner also did not seek for any document on the day when PW5 was examined in Chief. Therefore, the Court below was not inclined to recall PW5 for cross-examination. In order to give one opportunity to the petitioner, this Court is inclined to interfere with the order passed by the Court below.

6. In the light of the above discussion, the order passed by the Court below in Crl MP No.70 of 2023 in SC No.331 of 2022 is hereby set-aside. It is brought to the notice of this Court that the case is posted for hearing on 06.01.2024. On that day, the investigation officer shall be



present before the Court below. The petitioner shall pay a cost of Rs.2500/- to PW5. On such payment of cost, the petitioner is directed to cross-examine PW5 and the cross examination shall be completed on the same day. If these conditions are not complied with by the petitioner, the Court below can proceed further with the case in accordance with law.

7. In the result, this Criminal Original petition is allowed in the above terms.

03.01.2024

Index : Yes / No

Internet : Yes / No

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Note : Issue order copy on 04.01.2023

To

1. The Inspector of Police,
PEW- Virudhachalam Police Station,
Cuddalore District.
2. The Public Prosecutor,
High Court of Madras,
Madras.



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N.ANAND VENKATESH, J.,

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Crl.O.P.No.28956 of 2023

Dated:03.01.2024