



CrI.O.P.No.28912 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2024

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.O.P.No.28912 of 2024

Babu

... Petitioner

Vs.

The State rep. by
The Station House Officer
V7, Nolambur Police Station
Chennai

... Respondent

Prayer: Criminal Original Petition filed under Section 528 of B.N.S.S. to set aside the order passed in C.M.P. No.4623 of 2024, dated 29.10.2024 pending on the file of the Judicial Magistrate Court, Ambattur.

For Petitioner	: Mr.R.Thirumoorthy
For Respondent	: Mr.S.Sugendran Additional Public Prosecutor



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ORDER

This Criminal Original Petition has been filed by the petitioner to set aside the order passed in C.M.P. No.4623 of 2024, dated 29.10.2024 pending on the file of the Judicial Magistrate Court, Ambattur.

2. The case of the petitioner is that the petitioner is an accused in Crime No.447 of 2017 on the file of the respondent police and facing trial in C.C.No.447 of 2017 on the file of the learned Judicial Magistrate Court, Ambattur. The case is pending from the year 2017, however, the respondent police did not produce the prosecution witnesses for so long. On 05.06.2024, the trial Court directed the respondent police to produce the witnesses L.W.1 to L.W.3 on 07.08.2024 however, there was no progress and hence, the trial Court once again issued summons for appearance of L.W.1 to L.W.3 on 16.10.2024. On 16.10.2024, due to heavy rain, the case was adjourned to 17.10.2024. On 17.10.2024, the learned Magistrate was on leave. Thereafter, all of a sudden, on



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23.10.2024, L.W.1 to L.W.3 were examined citing the order of this Court dated 07.08.2024 made in CrI.O.P.No.846 of 2023 without giving opportunity to the petitioner to cross examine the witnesses and posted the case to 25.10.2024 for further witnesses. Immediately on 25.10.2024, the petitioner filed an application in C.M.P.No.4623 of 2024 before the trial Court to recall P.W.1 to P.W.3 for the purpose of cross examination, but the same was not considered. Hence, the present petition is filed.

3. The contention of the petitioner is that this Court while disposing the petition filed by the defacto complainant seeking direction to the learned Magistrate to dispose of the case within a time frame, has directed the learned Magistrate to complete the examination of witnesses on or before 30.11.2024 and to pronounce the judgment preferably by the end of 31st December 2024. Hence, the trial Court proceeded with chief on 23.10.2024 and closed the evidence of P.W.1 to P.W.3 without considering the request made by the petitioner's counsel and posted the case to 25.10.2024 for further witnesses.



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The petitioner neither aware of the order of this Court nor the presence of the witnesses on 23.10.2024.

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4. Heard both sides and perused the materials available on record.

5. It is seen that this Court vide order dated 07.08.2024 in CrI.O.P.No.846 of 2023, has given a direction to the magistrate to complete the examination of witnesses and pronounce judgement by the end of 31st December 2024 as follows:

4. Taking note of the fact that the case is pending more than seven years and so far no witness has been examined, though the prosecution relied only upon seven witnesses, it is necessary to direct the trial Court to examine the witnesses on a day to day basis and not to adjourn the case for longer dates.

5. The Investigation Officer is directed to marshal the witnesses on all hearing dates and complete the examination of witnesses before 30th November 2024. The accused shall cross-examine the



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prosecution witnesses on the same day of their chief examination. Thereafter, the learned Judicial Magistrate shall proceed with Section 313 Cr.P.C. and examine the witness for defence, if any, and render judgment preferably by the end of 31st December 2024.

6. A perusal of records shows that the learned Magistrate, by considering the facts and circumstances of the case and also the directions of this Court, has dismissed the petition filed by petitioner to recall the witnesses and despite of giving notice, the petitioner has adamantly not chosen to cross-examine the witnesses. Despite the directions of this Court, the petitioner has not co-operated to cross-examine the witnesses.

7. However, in the interest of justice and in order to give an opportunity to the petitioner, this Criminal Original Petition is allowed on condition that the petitioner shall deposit a sum of Rs.30,000/- (Rupees Thirty Thousand Only) before the trial Court in C.C.No.447 of 2017 on or before 28.11.2024 failing



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which, this petition shall stand dismissed automatically without any further reference.

8. In case the petitioner deposits the said amount, the learned Magistrate shall summon the witnesses P.W1 to P.W.3 to be cross-examined on 04.12.2024 and complete the cross-examination on the same day and thereafter, proceed further as per the directions of this Court dated 07.08.2024 made in Crl.O.P.No.846 of 2023. Further, the learned Magistrate is directed to pay Rs.10,000/- (Rupees Ten Thousand only) to each of the witnesses viz. P.W.1 to P.W.3 from the said deposit amount of Rs.30,000/-.

9. With the above directions, this Criminal Original Petition is disposed of.

19.11.2024

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

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Note: Issue Order Copy On 21.11.2024

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To

1. The Judicial Magistrate Court,
Ambattur.
2. The Station House Officer
V7, Nolambur Police Station
Chennai
3. The Public Prosecutor,
High Court of Madras.



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P.VELMURUGAN. J.

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