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Crl.O.P.No.30107 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2024

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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.O.P.No.30107 of 2024

Manikandan

... Petitioner

Vs.

State rep.by its
The Inspector of Police,
Avinashipalayam Police Station,
Tiruppur District,
Crime No.638 of 2015.

... Respondent

Prayer: Criminal Original Petition is filed under Section 528 of BNSS, 2023, to set aside the order dated 16.10.2024 passed in Crl.M.P.No.5288 of 2024 in C.C.No.44 of 2016 on the file of the learned Judicial Magistrate, Palladam, Tiruppur District.

For Petitioner : Mr.M.Vijayaragavan
For Respondent : Mr.S.Sugendran
Additional Public Prosecutor

ORDER

Challenging the order dated 16.10.2024 passed in
Crl.M.P.No.5288 of 2024 in C.C.No.44 of 2016 on the file of the learned



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Judicial Magistrate, Palladam, Tiruppur District, the present petition is filed by the petitioner/sole accused.

2.The petitioner is the sole accused and he is facing trial for the alleged offences under Sections 279 and 304 A IPC in C.C.No.44 of 2016 on the file of the Judicial Magistrate Court, Palladam, Tiruppur District. During trial, on 02.11.2022, P.W.1 to P.W.4 were examined in chief, but they were not cross-examined by the petitioner/accused on the same day of their chief examination, since the petitioner was not feeling well on that day. Thereafter, the investigating officer/P.W.5 was examined in chief after a lapse of two years i.e., on 17.11.2024. While that being so, the petitioner/accused filed a petition in Crl.M.P.No.5288 of 2024 under Section 311 Cr.P.C., to re-call P.W.1 to P.W.4 for cross-examination. The learned Magistrate, vide order dated 16.10.2024, dismissed the said petition. Aggrieved by the same, the present petition has been filed by the petitioner/accused.

3. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record.



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4. It is seen from the impugned order of the learned Magistrate that the Calendar Case is pending from the year 2016. Though the Police took much efforts to serve summons on the petitioner, finally they served summons on the petitioner only through Registered Post in the year 2018. However, the petitioner refused to take summons and had not appeared before the Court below and that a bailable warrant was issued against him on 16.09.2018. Thereafter, the petitioner had voluntarily surrendered before the trial Court on 05.02.2021. Even after his surrender, he was irregular in his presence before the trial Court for prosecuting the case and he did not co-operate for examination of the witnesses. After long time, summons were issued to P.W.1 to P.W.4 and they were examined in chief on 02.11.2022. Though sufficient opportunity was given, he did not cross examine the witnesses on the same day itself. It is further seen that, after chief examination of witnesses, the case was pending for two years without any progress, in the meantime, the petitioner did not take any steps to cross examine witnesses. However, after a lapse of two years, he filed the present petition under Section 311 Cr.P.C., to re-call P.W.1 to P.W.4 for cross-examination.

5. Admittedly, due to non-co-operation of the petitioner, the matter is pending from the year 2016. Though P.W.1 to P.W.4 were examined



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in the year 2022, itself, the petitioner filed the re-call petition only in the year 2024, which itself clearly shows that the petitioner is not interested to conduct the case. However, in the interest of justice and in order to give an opportunity of hearing to the petitioner, this Criminal Original Petition is allowed, setting aside of the order dated 16.10.2024 passed in CrI.M.P.No.5288 of 2024 with the following directions :

(i) The petitioner shall deposit a sum of Rs.40,000/- (Rupees Forty Thousand only) as costs to the credit of C.C.No.44 of 2016 on the file of the Judicial Magistrate Court, Palladam on or before 17.12.2024.

(ii) Each of the witnesses i.e., P.W.1 to P.W.4 are entitled to get a sum of Rs.10,000/- out of the said Rs.40,000/-.

(iii) On such deposit, the Court below is directed to issue summons to P.W.1 to P.W.4 and fix a date for their appearance and record their evidence. The defence counsel is directed to cross examine the witnesses on the same day itself.

(iv) On appearance of P.W.1 to P.W.4, the Court below shall disburse the said amount i.e., each Rs.10,000/- to the witnesses.

(v) In default to deposit the said amount on or before 17.12.2024, this petition shall stand dismissed automatically, without any further reference to this Court.



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Note: Issue Order Copy on 04.12.2024

Index : Yes/No
Neutral Citation Case : Yes/No
Speaking Order : Yes/No
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To

1. The Judicial Magistrate,
Palladam, Tiruppur District.
2. The Inspector of Police,
Avinashipalayam Police Station,
Tiruppur District.
3. The Public Prosecutor,
High Court, Madras.



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P.VELMURUGAN, J

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