



*Crl.O.P.(MD).No.1743 of 2024*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 06.02.2024

CORAM:

**THE HONOURABLE Mr. JUSTICE SATHI KUMAR SUKUMARA KURUP**

Crl.O.P.(MD).No.1743 of 2024

and

Crl.M.P.(MD).No.1286 of 2024

1.Chinnathai

2.Jothimani

... Petitioner/Accused No.1 and 2

Vs.

1.The State represented by its,  
Inspector of Police,  
Thiruthangal Police Station,  
Virudhunagar District.  
Crime No.35 of 2022

...1<sup>st</sup> Respondent/Complainant

2.G.Mareeswari

...2<sup>nd</sup> Respondent/De-facto Complainant

**Prayer :** Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to transfer the case in S.C.No.112 of 2022 on the file of the learned Sessions Court (Fast Track Mahila Court) Virudhunagar at Srivilliputhur to learned Sessions Judge Mahila Court, Madurai.

For Petitioner : Mr.C.Ezhilarasu

For R-1 : Mr.T.Senthilkumar  
Additional Public Prosecutor



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**ORDER**

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This Criminal Original Petition had been filed seeking direction to withdraw the trial from the learned Sessions Court (Fast Track Mahila Court) Virudhunagar at Srivilliputhur.

2. The learned Counsel for the Petitioner submitted that the Petitioners were not granted bail and they were still in prison. As per the order passed by this Court in Crl.O.P(MD).No.22175 of 2023 dated 07.12.2023, the Trial Court was directed to examine PW21 on 18.12.2023, thereby the Petitioners/ Accused No.1 and 2 in S.C.No.112 of 2022 shall be afforded an opportunity to cross examine without fail.

3. The learned Additional Public Prosecutor appearing for the first Respondent on instructions submitted that the PW21 is the Deputy Superintendent of Police, who had already deposed evidence. At that time, he was cross examined, only to harass him, the accused had filed the petition to recall PW21, which was dismissed by the learned Sessions Judge, Fast Track Mahila Court, Srivilliputhur in Crl.M.P.No.2240 of 2023 dated 27.09.2023, against which Crl.O.P.(MD).No.22175 of 2023 was filed and this Court vide order dated 07.12.2023 directed the learned Sessions Judge to afford an opportunity to the Petitioners herein.



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4. The learned Additional Public Prosecutor also invited attention of this Court to the 'B' Diary extract furnished by the Petitioners in the typed set filed along with this Petition. It is the further submission of the learned Additional Public Prosecutor that the PW21, since serving at Krishnagiri far away from Virudhunagar, was unable to appear on short notice, sought to be examined by virtual mode, which was accepted by the learned Judge, but the learned Counsel appearing for the Petitioners herein vehemently opposed and it is nothing but harassing the witnesses. Therefore, on 29.01.2024, the PW21 appeared physically. At that time, even though he was available before the Court, the learned Counsel appearing for the Petitioners did not cross examine. The learned Additional Public Prosecutor furnished the daily status uploaded on the website of the Court and it is extracted as follows:

Mahila Court, Srivilliputtur, Virudhunagar  
**In the Court of :** Sessions Judge, Mahila Court  
**CNR Number :** TNVR110004832022  
**Case Number :** SC/0000112/2022  
The Inspector of Police, Thiruthangal P.S **versus** Chinnathai  
**Date:** 29-01-2024

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**Business** : A1, A2 produced, R.E. Till 02.02.2024, pw 21 present but counsel not present, Informed Honble High Court call on 02.02.2024.

**Next Purpose** : Evidence  
**Next Hearing Date** : 02-02-2024

Sessions Judge, Mahila Court



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Mahila Court, Srivilliputtur, Virudhunagar  
**In the Court of :** Sessions Judge, Mahila Court  
**CNR Number :** TNVR110004832022  
**Case Number :** SC/0000112/2022

The Inspector of Police, Thiruthangal P.S **versus** Chinnathai  
**Date:** 02-02-2024

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**Business** : A1, A2 produced, R.E. Till 07.02.2024. For further Proceedings by 07.02.2024.

**Next Purpose** : For further Proceedings

**Next Hearing Date** : 07-02-2024

Sessions Judge, Mahila Court

5. By way of rejoinder, the learned Counsel for the Petitioners submitted that the Petitioners were not informed in advance on the appearance of PW21 on 29.01.2024.

6. When the learned Counsel for the Petitioners before the Trial Court was engaged in a Trial in the different Court, he was informed through mobile phone by the Respondent Police that the PW21 is present before this Court. The information was given only at 11.30 a.m on 29.01.2024. Also it is his submission that as per the order passed by this Court in Crl.O.P.(MD).No.22175 of 2023 dated 07.12.2023, the learned Trial Court Judge was directed to afford an opportunity to the accused/Petitioners for cross examination of PW21 on 18.12.2023. This Court passed an order on 07.12.2023 granting time to the



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Trail Court to examine PW21 on 18.12.2023, but PW21 did not appear on 18.12.2023 and the prosecution has not sought extension of time before the High Court which had granted time only till 18.12.2023. Under those circumstances, the Petitioners Advocate cannot cross examine the PW21 at the whims and fancies of the Petitioners. Also it is his submission that only if he is released on bail, he will be able to produce the defence witnesses. Till date, he had not been granted bail.

7. It is the further submission of the learned Counsel for the Petitioners that when the Petitioners were granted interim bail, he had summoned independent witnesses as defence witnesses. The same witnesses were threatened by the Police officers. Therefore they had apprehension and was scared of deposing evidence before the Trial Court. Hence, they did not appear before the Trial Court. The Petitioners herein wanted to put such questions to the Investigation Officer regarding the refusal of the witnesses summoned by the accused to depose evidence on their behalf as defence witnesses and the threat made to them by the Police officials.

8. Considering the submission of the learned Counsel for the Petitioners and the learned Additional Public Prosecutor, the learned Sessions Judge Fast Track Mahila Court, Virudhunagar is directed not to pronounce judgment



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without affording opportunity to the Petitioners to examine their witnesses. The learned Sessions Judge is granted the discretion to examine the witnesses PW21, mentioned in this case either physically or on virtual mode. If the Petitioner's Counsel did not exercise his right of cross examination on the date fixed by the learned Trial Judge, he/she is within his/her discretion to dispose of the case. Also the learned Trial Judge shall exercise discretion regarding the claim of the Petitioners to examine defence witness by imposing any condition on Petitioners / Accused No.1 and 2.

9. At part heard stage, the contention of the Accused before the Trial Court seeking transfer of the part heard trial case cannot be accepted, considering the bald allegation made against the Presiding Judge and the prosecution team.

10. With the above directions, this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petition is closed.

**06.02.2024**

NCC:yes/no  
Index:yes/no  
Internet:yes/no  
Nsr

**Issue Order Copy on 06.02.2024.**



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To

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- 1.The Sessions Court,  
(Fast Track Mahila Court)  
Virudhunagar at Srivilliputhur.
- 2.The Inspector of Police,  
Thiruthangal Police Station,  
Virudhunagar District.
- 3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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**SATHI KUMAR SUKUMARA KURUP, J.**

Nsr

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