



Crl.O.P.(MD)No.2336 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.11.2024

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD) No.2336 of 2023

1.Muthuramalingam
2.Sakthikannan

... Petitioners

Vs.

The Inspector of Police,
Seidunganallur Police Station,
Tuticorin District.
In Crime No.8 of 2017

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the dismissal order in Crl.M.P.No. 3341 of 2022 passed by the learned 2nd Additional District and Sessions Court,Tuticorin and recall the witness of P.W.1 to P.W.7 and allow to cross examine them.

For Petitioners	: Mr.M.Subash Babu for Mr.C.Susi Kumar
For Respondent	: Mr.A.Albert James Government Advocate (Crl.Side)



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ORDER

This petition has been filed challenging the proceedings of the learned II Additional District and Sessions Judge, Thoothukudi, in Crl.M.P.No.3341 of 2022 in S.C.No.194 of 2019, dated 20.12.2022, dismissing the application filed by the petitioners under Section 311 of Cr.P.C. to recall P.W.1 to P.W.7 for cross examination.

2.Heard the learned counsel for the petitioners and the learned Government Advocate appearing on behalf of the respondent.

3.The petitioners are facing trial before the Court below for offences under Sections 147, 148, 302, 342, 364, 149 and 120 (b) of IPC. There are totally five accused persons in this case. The petitioners have been arrayed as A1 and A2.

4.The prosecution examined P.W.1 to P.W.7 on 06.06.2022. P.W.7 was examined on 07.06.2022. None of the witnesses were examined on the side of the petitioners. The petitioners filed an



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application under Section 311 of Cr.P.C. to recall P.W.1 to P.W.7 on 17.06.2022. The same was dismissed by the Court below by an order dated 20.12.2022 on the ground that no explanation has been given as to why the witnesses were not examined on the day when they were examined in chief and that the only reason that has been assigned is that there was a change in counsel for A1 and A2.

5.In the considered view of this Court, the petitioners are facing serious charges before the Court below. It is not as if the petitioners filed the application after a long lapse of time. The petitioners had filed the application for recall of P.W.1 to P.W.7 within a period of ten days after those witnesses were examined in chief. It was done after the petitioners engaged a new counsel since the existing counsel did not cross examine those witnesses. Hence, one opportunity must be given to the petitioners to recall P.W.1 to P.W.7 for cross examination.

6.The learned Government Advocate, on instructions, submitted that the case is now posted for hearing on 05.12.2024. The learned Government Advocate further submitted that there is no progress



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in this case since the case was pending before this Court.

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7.Earlier, the petitioners had a grievance to the effect that they were not furnished with certain documents under Section 207 of Cr.P.C. This Court directed the II Additional District and Sessions Judge to file a report in this regard and in the said report, it has been mentioned that all the documents that was relied upon by the prosecution has been furnished to the petitioners. Hence, the non-availability of the documents cannot be a reason for the petitioners to further postpone the cross examination of P.W.1 to P.W.7.

8.In the light of the above discussion, the order passed by the learned II Additional District and Sessions Court, Thoothukudi, in Crl.M.P.No.3341 of 2022 in S.C.No.194 of 2019, dated 20.12.2022, is hereby set aside. The Court below shall issue fresh summons to P.W.1 to P.W.7. On the date of appearance of these witnesses, they have to be cross examined and the cross examination must be completed on the same day or at the best the next day. If for any reason, the petitioners do not cross examine the witnesses on the day of their appearance, they will



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forfeit their right to recall those witnesses in future. It is also made clear that the other witnesses who are examined on the side of the prosecution shall also be cross examined on the same day they are examined in chief.

9.In the result, this Criminal Original Petition is allowed with a direction to the learned II Additional District and Sessions Judge, Thoothukudi, to complete the proceedings in S.C.No.194 of 2019 within a period of four months from the date of receipt of a copy of this order.

18.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PKN

To

- 1.The Inspector of Police,
Seidunganallur Police Station,
Tuticorin District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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N.ANAND VENKATESH,J.

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