



*Crl.O.P.(MD).No.2074 of 2024*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 20.02.2024

CORAM:

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

Crl.O.P.(MD).No.2074 of 2024

and

Crl.M.P.(MD).No.1556 of 2024

1.G.Selvan

2.G.Selva Singh

3.G.Suresh

4.K.Madaswamy

5.Anthony Dhas

6.Gnanasekhar

7.B.Raseeth

8.Durai

... Petitioners

Vs.

1.The Inspector of Police,  
Bhoothapandy Police Station,  
Kanniyakumari District.  
(Crime Nos.333 of 2005 and 334 of 2005)

2.Ravi



*Crl.O.P.(MD).No.2074 of 2024*

3.Selva Kumar

...Respondents

WEB COPY

**Prayer :** Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to direct the learned Additional District and Sessions Judge (Fast Track Court), Nagercoil, Kanniyakumari District to conduct joint trial in S.C.No.12 of 2009 along with S.C.No.13 of 2009 on the file of Additional District and Sessions Judge (Fast Track Court), Nagercoil, Kanniyakumari District.

For Petitioners : Mr.S.Sivakumar

For R-1 : Mr.T.Senthil Kumar  
Additional Public Prosecutor

For R-2 and R-3 : No Appearance

### **ORDER**

This Criminal Original Petition had been filed seeking direction against the learned Additional District and Sessions Judge (Fast Track Court), Nagercoil, Kanniyakumari District, to conduct joint trial in S.C.No.12 of 2009 along with S.C.No.13 of 2009 on the file of Additional District and Sessions Judge (Fast Track Court), Nagercoil, Kanniyakumari District.



*Crl.O.P.(MD).No.2074 of 2024*

WEB COPY

2. The learned Counsel for the Petitioner sought stay of the trial in S.C.No.12 of 2009 on the ground that S.C.No.13 of 2009 was also taken on file based on two FIRs which were registered on the same date for two murders, taken place within duration of half an hour or one hour. It is the submission of the learned Counsel for the Petitioner that instead of filing single FIR, the Investigation Officer registered two FIRs and two FIRs are not case and counter, but same case in the course of the same transaction, two murders have been committed. Instead of laying a single charge sheet, the Investigation Officer proceeded with filing two charge sheets, based on which, the same was taken on file by the learned Sessions Judge as two separate Sessions Cases in S.C.No. 12 of 2009 and S.C.No.13 of 2009. In both the cases, the witnesses cited by the prosecution or the investigation officer are the same. In both the cases, the accused are the same. Therefore, instead of conducting a joint trial, the learned Judge had chosen to conduct trial in S.C.No.12/2009 which had reached the stage of pronouncing judgment, whereas in S.C.No.13 of 2009, summons was issued.



*Crl.O.P.(MD).No.2074 of 2024*

WEB COPY

3. The learned Counsel for the Petitioners also relied on the ruling of the Hon'ble Division Bench of this Court in Crl.A.(MD).Nos.348, 349 of 2017 and 15 and 178 of 2019 and sought stay of the proceedings in S.C.No.12 of 2009 which had reached the stage of judgment. Therefore, the Petitioners sought stay of the proceedings.

4. At that stage, the learned Additional Public Prosecutor also objected to the line of arguments of the learned Counsel for the Petitioners stating that facts of the reported judgment relied by the learned Counsel for the Petitioner are different. Here, the learned Additional Public Prosecutor submitted that there are difference between the case before this Court and the case in the reported decision. In the facts of the case, witnesses differ, mahazar witnesses in one case are the eye-witnesses in other case. Eye-witnesses in other case become the mahazar witnesses in the second case. Also, there was no charge for Section 120(b) of IPC. Also, the case is of the year 2009. With great difficulty, the prosecution was able to produce the accused and witnesses, as the occurrence taken in the year 2005, the accused had delayed the proceedings.



*Crl.O.P.(MD).No.2074 of 2024*

WEB COPY

5. Also, the learned Additional Public Prosecutor relied on the case details uploaded on the website of the Principal District Judge, Kanniyakumari District, in which, it is shown that non-bailable warrant is pending against the accused from 09.10.2015 to 08.02.2016 and subsequently, from 04.04.2019 to 27.01.2023. Therefore, he opposed the line of arguments of the learned Counsel for the Petitioner.

6. Based on the submission of the learned Counsel for the Petitioner, this Court had sought remarks from the learned Trial Judge.

7. As per the remarks of the learned Trial Judge, the submission of the learned Counsel for the Petitioner cannot at all be heard, since the accused had delayed the proceedings and this is an attempt to further delay the pronouncement of the judgment. The learned Trial Judge had relied on the ruling of the Hon'ble Supreme Court in the case of *Nasibsingh Vs State of Punjab* reported in **CDJ 2011 SC 782** and he seeks to reject the contention of the accused who are the Petitioners before this Court.



*Crl.O.P.(MD).No.2074 of 2024*

8. Considering the materials available before the Trial Court and as per the reported ruling of the Hon'ble Supreme Court, the High Court shall give due weightage to the opinion expressed by the Trial Judges as they are the decision makers and records are available with them, accused and witnesses are available with them. They are aware of the conduct and demeanour of the accused and witnesses before the Trial Court. The opinion of the learned Trial Judge, Additional District and Sessions Judge (Fast Track Court), Nagercoil at Kanniyakumari District, distinguished the opinion of the Division Bench for simultaneous trial is given due weightage by this Court. Therefore, this Criminal Original Petition does not have any merit in the light of the opinion expressed by the learned Trial Judge and the objections of the learned Additional Public Prosecutor. The alleged occurrence is of the year 2005. The Session Case was taken on file in the year 2009. The trial commenced in the year 2023. In between, the accused had delayed the trial. As per the submission of the learned Additional Public Prosecutor, with great difficulties, they had secured the accused for the offences alleged to have been committed in the year 2005. The trial commenced in the year 2003. Even though Sessions Case was taken on file in the year 2009, the trial was delayed by 14 years due to the conduct of the accused.



*Crl.O.P.(MD).No.2074 of 2024*

WEB COPY

9. As per the remarks offered by the learned Additional District and Sessions Judge (Fast Track Court), Nagercoil, Kanniyakumari District, the accused in this case who are the Petitioners before this Court, could have raised such an objection at the time of framing of charges or at the time of commencement of the trial, but they had not done so. They allowed the Court to proceed with the recording of evidence and it had crossed the stage of 313 proceedings. Now, at the stage of arguments only to delay the pronouncement of judgment, they had approached the Court under Section 482 Cr.P.C. Therefore, the learned Additional Public Prosecutor seeks indulgence of this Court to reject such contention in the light of the Hon'ble Supreme Court ruling relied on by him. This Court, under the guidelines issued by the Hon'ble Supreme Court regarding views expressed by the Trial Judges to be given due weightage, rejects the contention of the learned Counsel for the Petitioner seeking stay of the trial which had proceeded upto the stage of arguments. Whatever has to be raised by the Petitioners/accused, shall be raised in the subsequent trial.



*Crl.O.P.(MD).No.2074 of 2024*

WEB COPY

10. With the above observations, this Criminal Original Petition is dismissed. The petitioners are directed to proceed with the trial in S.C.No.12 of 2009 by pronouncing the judgment and also to proceed with the trial in S.C.No.13 of 2009. The accused in both cases are to co-operate with the trial court. The learned Additional District and Sessions Judge (Fast Track Court) Nagercoil is directed to detain the accused who does not co-operate with the trial proceedings. If any of the accused absconds and NBW issued, if the accused is produced on NBW by the Respondent Police, such accused shall be detained in prison till the disposal of both the cases in S.C.No.12 of 2009 and S.C.No.13 of 2009. Consequently, connected miscellaneous petition is closed.

**20.02.2024**

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



*Crl.O.P.(MD).No.2074 of 2024*

To

WEB COPY

- 1.The Additional District and Sessions Judge (Fast Track Court),  
Nagercoil,  
Kanniyakumari District.
- 2.The Inspector of Police,  
Bhoothapandy Police Station,  
Kanniyakumari District.
- 3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



WEB COPY



*Crl.O.P.(MD).No.2074 of 2024*

**SATHI KUMAR SUKUMARA KURUP, J.**

Nsr

Crl.O.P.(MD).No.2074 of 2024

20.02.2024