



CrI.O.P.(MD) No.3283 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.03.2024

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P (MD) No.3283 of 2024

and

CrI.M.P.(MD) Nos.2595 and 2597 of 2024

Mari Pandi

...Petitioner

vs

**The Inspector of Police,
Thiruthangal Police Station,
Virudhunagar District.
Crime No.736 of 2018**

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying, to call for the records and set aside the order dated 01.12.2023 passed in C.M.P.No.1400 of 2023 in SC.No.74 of 2019 on the file of the Court of Sessions Judge, (Magalir Neethimandram) Fast Track Mahila Court, Virudhunagar District at Srivilliputtur.

For Petitioner : Mr.S.Vinayak

**For Respondent : Mr.B.Thanga Aravindh
Government Advocate (CrI.side)**



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ORDER

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The learned Counsel for the Petitioner submits that the Petitioner is the sole accused in S.C.No.74 of 2019 on the file of the learned Sessions Judge (Magalir Neethimandram) Fast Track Mahila Court, Virudhunagar District at Srivilliputhur. It is the contention of the learned Counsel for the Petitioner that the Petitioner is facing trial. During trial, he had co-operated with the trial Court. The prosecution had examined 36 witnesses. Now, at the fag end of trial, the prosecution had filed CMP.No.1400 of 2023 in SC.No.74 of 2019 seeking to re-call the prosecution witness, P.W13 to examine him further.

2.The learned Counsel for the Petitioner further submits that P.W13 was already examined and cross-examined. Now, as an after thought to fill up the *lacuna* in the prosecution case, the petition under Section 311 Cr.P.C. had been filed seeking to re-call P.W13 regarding 'certain facts'. Also, in the same petition, the prosecution had sought to examine a new witness as an additional witness as L.W37, who was not at all cited in the charge sheet. The so called L.W37 had been sought after the examination of 36 witnesses.



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It is belated. It will cause prejudice to the valuable right of the defense of the accused.

3.The learned Counsel for the Petitioner invited the attention of this Court that the additional witness sought to be examined is the Technician regarding the CCTV camera, which is alleged to have been maintained in the school premises. It is the case of the Petitioner that it is nothing but an attempt to introduce the new witness taking the accused by surprise. For the alleged occurrence ie., alleged to have placed in the year 2018, a new witness is introduced as though videograp is available on the date of occurrence and the said witness is sought to be examined after 6 years, which is un-permissible.

4.It is the further submission of the learned Counsel for the Petitioner that even though the learned Counsel appearing for the accused raised his objections, the learned Sessions Judge (Magalir Neethimandram) Fast Track Mahila Court, Virudhunagar District at Srivilliputhur had rejected the objections and allowed the petition. Therefore, he seeks to set aside the order passed by the learned Sessions Judge (Magalir Neethimandram) Fast



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Track Mahila Court, Virudhunagar District at Srivilliputhur in CMP.No.1400 of 2023 in S.C.No.74 of 2019 dated 01.12.2023.

5.The learned Government Advocate (CrI.side) objected to the submission of the learned Counsel for the Petitioner stating that the order passed by the learned Sessions Judge (Magalir Neethimandram) Fast Track Mahila Court, Virudhunagar District at Srivilliputhur in CMP.No.1400 of 2023 in S.C.No.74 of 2019 dated 01.12.2023 is a well reasoned order. He would further submit that this petition lacks merits and it has to be dismissed.

6.On perusal of the order passed by the learned Sessions Judge (Magalir Neethimandram) Fast Track Mahila Court, Virudhunagar District at Srivilliputhur, it is found that the petition itself is a belated petition by the prosecution. In the principles of fair trial, the prosecution is not permitted to introduce the new witness at the fag end of the trial. The purpose of furnishing documents and copies of the charge sheet to the accused under Section 207 Cr.P.C., is based on the principles of fair trial. What was collected in the course of the investigation is made available during the



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committal proceedings to the accused, so that the accused has the time to discuss the facts of the case with the Counsel, who was engaged by him to defend his valuable right of defense in a sessions trial. In the fag end of the trial, considering the fact that there are loopholes in the case, the prosecution is aware of the same and had attempted to plug the loopholes at the fag end of the trial, which causes prejudice to the accused. As per the Constitution of India, fair trial is a guaranteed right to the citizens of this Country.

7.Under those principles, the submission of the learned Counsel for the Petitioner is found justified. Therefore, the petition filed by the prosecution seeking to introduce the new witness takes the accused by surprise, who was not at all cited earlier. Also, after P.W13 had been cross-examined, recalling the same witness also cannot be permitted. Therefore, the order passed by the learned Sessions Judge (Magalir Neethimandram) Fast Track Mahila Court, Virudhunagar District at Srivilliputhur in CMP.No.1400 of 2023 in S.C.No.74 of 2019 dated 01.12.2023 is hereby set aside. The learned Sessions Judge (Magalir Neethimandram) Fast Track Mahila Court, Virudhunagar District at Srivilliputhur is directed to proceed



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further and dispose of SC.No.74 of 2019 on merits as per law at the earliest.

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In the result, this Criminal Original Petition is allowed. Consequently,
connected Miscellaneous Petitions are closed.

Internet:Yes./No

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Index:Yes/No

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To

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



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SATHI KUMAR SUKUMARA KURUP, J.

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