



CrI.O.P.(MD) No.5431 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.04.2024

CORAM

THE HON'BLE MR.JUSTICE B.PUGALENDHI

CRL.O.P (MD) No.5431 of 2024

Siva

...Petitioner

Vs

**State through
The Inspector of Police,
Radhapuram Police Station,
Radhapuram,
Tirunelveli District.
(Crime No.102 of 2011)**

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records and set aside the order passed by the learned District Munsif cum Judicial Magistrate, Radhapuram, Tirunelveli District in CrI.M.P.No.7376 of 2023 in C.C.No.68 of 2019 dated 01.09.2023 in respect of dismissing the petition filed by the petitioner under Section 311 of Cr.P.C. and direct the said Court to recall the witness, within a time frame fixed by this Court.

For Petitioner : Mr.G.Aravinthan

**For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor**



Crl.O.P.(MD) No.5431 of 2024

ORDER

WEB COPY

This criminal original petition has been filed seeking to set aside the order passed by the learned District Munsif cum Judicial Magistrate, Radhapuram, Tirunelveli District in Crl.M.P.No.7376 of 2023 in C.C.No.68 of 2019 dated 01.09.2023 in respect of dismissing the petition filed by the petitioner under Section 311 of Cr.P.C. and to direct the said Court to recall the witness.

2.The petitioner is a sole accused in C.C.No.68 of 2019 pending on the file of the learned District Munsif cum Judicial Magistrate, Radhapuram, Tirunelveli, and he has filed a petition to recall the witnesses P.W.1 to P.W.5, P.W.8, P.W.9, P.W.11, P.W.12, P.W.15 and P.W.16 and the same was dismissed by the trial Court by order dated 01.09.2024. Aggrieved over the same, the petitioner has filed this petition to set aside the order passed by the trial Court.

3.The learned Counsel for the petitioner submitted that the Advocate in the trial Court has failed to cross-examine the witnesses for which the petitioner need not be put into difficulty. However, the petitioner herein has



CrI.O.P.(MD) No.5431 of 2024

taken a plea before the trial Court that the bundle was misplaced and therefore, he could not cross-examine the witnesses. The fact remains that the witnesses who were examined nine years back have not been cross-examined, the petitioner herein has also absconded for some period of time and he was secured on Non-bailable Warrant only on 20.06.2023. Thereafter, the petitioner has filed this application under Section 311 of Cr.P.C after a period of two months.

4.The learned District Munsif cum Judicial Magistrate, Radhapuram has dismissed the said application on 01.09.2023 stating that the petitioner has filed an application only in the month of April 2024.

5. The Court is of the view that the petitioner herein in order to drag the proceedings has not prosecuted the case properly. However, considering that he is facing the trial under Section 304 A of IPC before the trial Court, an opportunity would be provided to the petitioner. The petitioner has now confined to recall the witnesses P.W.1 to P.W.5, P.W.8 and P.W.16.



CrI.O.P.(MD) No.5431 of 2024

6. Therefore, this Criminal Original Petition is allowed with a direction to the learned District Munsif cum Judicial Magistrate, Radhapuram, to recall the witnesses P.W.1 to P.W.5, P.W.8 and P.W.16 for the purpose of cross-examination on a condition that the petitioner shall deposit a sum of Rs.5000/- for all those witnesses. The petitioner is expected to file an application along with a Demand Draft for all those witnesses. On such condition, the learned Judicial District Munsif cum Judicial Magistrate, Radhapuram, shall recall the witnesses on a particular day. In the event, if the petitioner failed to cross-examine the witnesses on a particular day, the learned Judicial Magistrate concerned shall proceed with the trial and pass suitable orders depending upon the available evidence.

15.04.2024

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

jbr



Crl.O.P.(MD) No.5431 of 2024

To

WEB COPY

1. The Inspector of Police,
Radhapuram Police Station,
Radhapuram,
Tirunelveli District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.O.P.(MD) No.5431 of 2024

B.PUGALENDHI, J.

jbr

CRL.O.P (MD) No.5431 of 2024

15.04.2024