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Crl.O.P.(MD).No.14463 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	20.10.2023
Pronounced On	:	14.02.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.O.P(MD).No.14463 of 2020

and

Crl.M.P(MD). No.6790 of 2020

Rajesh Ravichandar

... Petitioner/Petitioner/
Accused No.1

Vs.

State Represented through
The Inspector of Police,
Sawyerpuram Police Station,
Thoothukudi District.
(In Crime No.179 of 2013)

... Respondent/Respondent/
Complainant

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records and set aside the order of Trial Court in Crl.M.P.No.3026 of 2019 in S.C.No.78 of 2017 dated 26.11.2020 on the file of the Learned, II Additional Sessions Judge, Thoothukudi and allow the main petition.

For Petitioner : Mr.S.M.A.Jinnah

For Respondent : Mr.P.Kottaichamy
Government Advocate(Crl.Side)



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ORDER

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The petitioner/Accused No.1 in S.C.No.78 of 2017 has filed this petition to set aside the order passed in Crl.M.P.No.3026 of 2019, by the learned II Additional Sessions Judge, Thoothukudi, dated 26.11.2020, recalling the witnesses P.Ws.5, 11, 12, 13, under Section 311 of Cr.P.C., filed by the prosecution.

2.The prosecution laid final report against the petitioner and other five accused for the offence under Sections 120(B), 213, 449, 302 r/w 34 of IPC. The learned trial judge, after appearance of the accused, framed necessary charges and commenced the trial. The trial was commenced on 26.02.2019. Upto 27.06.2019, the prosecution examined 20 witnesses namely P.W.1 to P.W.20. When the case was pending for further examination of the remaining prosecution witnesses, the prosecution filed petition under Section 311 of Cr.P.C., to recall the witnesses P.Ws.5, 11, 12 and 13.

2.1.The petitioner has raised objections and stated that the prosecution filed the petition to fill up the lacuna. The learned trial judge, considering the offence under Section 302 of IPC and also the submission of the learned



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Additional Public Prosecutor, allowed the application by passing the impugned order in Crl.M.P.No.3026 of 2019, dated 26.11.2020. Challenging the same, the petitioner filed this criminal original petition.

3.The learned counsel appearing for the petitioner submitted that the prosecution has not made out the case to recall the witnesses P.Ws.5, 11, 12 and 13. In order to fill up the lacuna, the respondent/prosecution filed the petition and the same was erroneously allowed by the learned trial judge. Therefore, The accused was deprived of the right to fair trial and hence, he seeks order to set aside the impugned order dated 26.11.2020.

4.On the other hand, the learned Government Advocate (Crl. Side) submitted that the trial was commenced on 26.02.2019. Upto 27.06.2019, the prosecution examined 20 witnesses. Thereafter, the Additional Public Prosecutor, in order to strengthen the case of the prosecution, filed a petition to recall the witness P.W.5 to depose about the telephonic conversation made by the deceased prior to the occurrence. In the same manner, he also wants to recall the P.W.11 to P.W.13. Even though the P.Ws.11, 12 and 13 have not supported the case of the prosecution and they were treated as hostile, in order to clarify certain



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aspects, the re-examination of the witnesses is necessary. Hence, the learned trial judge correctly allowed the application in the interest of justice.

5.This Court considered the rival submissions made on either side and perused the record and also the impugned order.

6.The learned counsel for the petitioner submitted that in spite of the stay, the learned trial judge proceeded the trial. To verify the same, this court called a report from the learned II Additional Sessions Judge, Thoothukudi. The learned II Additional Sessions Judge, Thoothukudi, submitted the report before this Court on 13.10.2023, wherein, he stated that the petitioner has not produced any order relating to the extension of stay and hence, he proceeded with the trial. The learned trial judge also stated that all the witnesses were examined and questioning of the accused under Section 313 of Cr.P.C., is also over and the accused filed the petition under Section 315 Cr.P.C., to examine himself as a witness and the same was allowed on 01.07.2023. Thereafter, he filed another petition under Section 311 Cr.P.C., to recall him and mark certain documents.



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7.The respondent Police Officer filed the final report against the petitioner and other five accused under Section 120(B), 213, 449, 302 r/w 34 of IPC. After the appearance of the accused, charges was framed under Section 120(B) against A1 to A5, 302 r/w 109 of IPC, against A1, 302 r/w 34 of IPC, against A2 to A5, 449 of IPC against A2 and A3, 213 of IPC against A6, on 26.04.2017. The trial was commenced only on 26.02.2019. The investigation agency, in the final report cited 30 listed witnesses. Out of the listed witnesses, upto 27.06.2019, the prosecution examined 20 witnesses P.W.1 to P.W.20. At this stage, on 12.07.2019, in order to clarify certain aspects relating to the telephonic call made by the deceased to the mother prior to the occurrence and also other aspects, the prosecution filed the petition to recall the witness of P.W.5. Further, even though the P.Ws.11 to 13 were declared hostile, the prosecution wanted to examine the said witnesses to clarify certain aspects.

8.In view of the charge of murder, the learned trial judge inclined to allow the application and conduct the examination of the witnesses. According to the learned trial judge, the examination of the witnesses is essential to prove the grave charge of murder. He exercised his discretion in accordance with law. It appears that the recalling of witness is to be essential to just decision of the case.



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When the trial Court exercise its judicial discretion, this Court has no power to interfere with. The Hon'ble Supreme Court in the case of ***State Vs. N.Seenivasagan***, reported in ***2021 (14) SCC 1***, held as follows:

12.In our view, having due regard to the nature and ambit of Section 311 of the CrPC, it was appropriate and proper that the applications filed by the prosecution ought to have been allowed. Section 311 provides that any court may, at any stage of any inquiry, trial or other proceedings under CrPC, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined and the Court shall summon and examine or recall and re-examine any such person “if his evidence appears to it to be essential to the just decision of the case”. The true test, therefore, is whether it appears to the Court that the evidence of such person who is sought to be recalled is essential to the just decision of the case.

9.As on date, as per the impugned order dated 26.11.2020, the prosecution recalled the witnesses P.Ws.5, 11, 12 and 13 and examined them and they also



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cross examined the witnesses. After completion of 313 proceedings, the case was posted for further examination of the defence witness.

10.In view of the above, this Court finds no merit to allow this petition and the learned trial judge correctly allowed the application filed by the prosecution under Section 311 of Cr.P.C., to recall the witnesses of P.Ws.5, 11, 12 and 13.

11.Accordingly, this Criminal Original Petition is dismissed, by confirming the impugned order passed in Crl.M.P.No.3026 of 2019 in S.C.No.78 of 2017, dated 26.11.2020, on the file of the learned II Additional Sessions Judge, Thoothukudi. Consequently, the connected criminal miscellaneous petition is closed.

14.02.2024

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



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To

1. The II Additional Sessions Judge,
Thoothukudi.
2. The Inspector of Police,
Sawyerpuram Police Station,
Thoothukudi District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

vsg

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