



Crl.O.P.(MD)No.13513 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.09.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.13513 of 2024
and Crl.M.P.(MD)No.8378 of 2024

S.Karthikeyan

... Petitioner

Vs.

The Inspector of Police,
Dindigul Taluk Police Station,
Dindigul.
In Cr.No.1245 of 2024

... Respondent

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, to call for the records and to set aside the order passed by the learned Additional District and Sessions Judge, Dindigul in Crl.M.P.No.4652 of 2023 in S.C.No.103 of 2021 dated 25.07.2024.

For Petitioner : Mr.R.Rajamohan

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

For Defacto Complainant : Mr.S.Ramanathan

ORDER

This criminal original petition is directed as against the order dated 25.07.2024 passed in Crl.M.P.No.4652 of 2023 in S.C.No.103 of 2021



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on the file of the learned Additional District and Sessions Judge,
Dindigul.

2.The petitioner and other accused are facing case in S.C.No.103 of 2021 for the offence punishable under Sections 120(B), 341, 302, 506(2) r/w 34, 109 IPC.

3.The petitioner filed an application to recall P.W.1 to P.W.5 for the purpose of cross-examination. The learned Sessions Judge considering the tactics adopted by A2 and A4 in absconding themselves when the case was posted for trial and issuance of non-bailable warrant, dismissed the petition.

4.The learned Government Advocate(Crl.side) appearing for the respondent Police would submit that the prosecution has examined all the witnesses, except the Investigation Officer.

5.The learned counsel appearing for the defacto complainant has raised objection to entertain this petition.

6.The learned counsel appearing for the petitioner would submit that they have already cross-examined P.W.1, P.W.3 to P.W.5, that P.W.



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2 was not at all cross-examined and that now the petitioner is restricting his prayer only with regard to the recalling of P.W.2, on the ground that P.W.2 is the eye witness.

7.Considering the facts and circumstances of the case and also taking note of the fact that the petitioner is now restricting his prayer only with regard to recall of P.W.2/occurrence witness, this Court is of the view that the petitioner should be given one more opportunity to cross examine P.W.2, in order to prove his alleged defence. But at the same time, this Court is of the further view that the petitioner must be mulcted with costs and with further condition that the petitioner/accused, should cross examine P.W.2 on the day, when the witness is produced before the Court and if for any reason, the petitioner fails to cross examine the said witness on that particular day, then he will forfeit his rights to cross examine her.

8.In the result, the Criminal Original Petition stands disposed of and the impugned order, dated 25.07.2024 passed in Crl.M.P.No.4652 of 2023 in S.C.No.103 of 2021 on the file of the learned Additional District and Sessions Judge, Dindigul is set aside in respect of P.W.2 alone and the petition to recall P.W.2 is allowed on payment of cost of Rs.3,000/- (Rupees Three Thousand Only) to the credit of Madurai Bench of



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Madras High Court Advocates Welfare Fund [Indian Bank High Court

Branch, Madurai, Current Account No.7087208431, IFSC

IDIBI000H040] within a period of one week from the date of receipt of

copy of this order and on payment of process fee and batta to the said

witness and on further condition that the petitioner side should cross

examine the witness whenever the witness is produced before the Court

and in case of the petitioner's failure to cross examine the particular

witness, then he will forfeit his rights to cross examine the witnesses.

The trial Court is directed to summon P.W.2 for the purpose of cross

examination and complete the examination of the said witness within two

weeks from the date of receipt of copy of this order. Consequently,

connected miscellaneous petition is closed.

05.09.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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To

- 1.The Additional District and Sessions Judge,
Dindigul.
- 2.The Inspector of Police,
Dindigul Taluk Police Station,
Dindigul.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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