



Crl.O.P.(MD)No.14803 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.09.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.14803 of 2024

Jebaraj

... Petitioner

Vs.

State rep.
The Sub Inspector of Police,
Thalaiyuthu Police Station,
Tirunelveli District.
(Crime No.128 of 2020)

... Respondent

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, to call for the records of the order in Crl.M.P.No.2 of 2024 in S.C.No. 292 of 2022 on the file of the 3rd Additional Sessions Judge, Tirunelveli dated 09.08.2024 and set aside the same and consequently direct the 3rd Additional Sessions Judge, Tirunelveli recall the witnesses P.W.1 to P.W.13.

For Petitioner : Mr.S.Sathya Chidambaram

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



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ORDER

The Criminal Original Petition is directed against the order dated 09.08.2024 passed in Cr.M.P.No.2 of 2024 in S.C.No.292 of 2022 on the file of the III Additional Sessions Court, Tirunelveli, dismissing the application filed under Section 311 Cr.P.C.

2. It is not in dispute that the trial has already been commenced and P.W.1 was examined in chief on 28.02.2023 and P.W.13 was examined in chief on 08.08.2023 and that the petitioner, without cross-examining any of the witnesses, has filed the present application under Section 311 Cr.P.C. to recall P.W.1 to P.W.13 for the purpose of cross-examination.

3. The learned counsel appearing for the petitioner would submit that after filing the above application, the learned trial Judge has directed the petitioner orally to deposit Rs.10,000/- towards witness batta and since the amount was not deposited, the application was ordered to be



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dismissed. Challenging the said order, the present revision came to be filed.

4. In the impugned order, the learned trial Judge has observed that “No memo is filed and witness – Batta is not paid. Hence, on default this petition is Dismissed”. It is pertinent to note that the learned trial Judge has not passed any order directing the petitioner to deposit Rs.10,000/- towards witness batta but since oral direction was not complied with, the above application came to be dismissed.

5. Considering the above facts and circumstances and also taking note of the submission made by the learned counsel appearing for the petitioner that the petitioner is ready to deposit the amount immediately, the impugned order dated 09.08.2024 is hereby set aside. Accordingly, the petitioner is directed to deposit **Rs.10,000/- (Rupees Ten Thousand only)** before the III Additional Sessions Court, Tirunelveli within a period of three days from today (04.09.2024) and on such deposit, the learned III Additional Sessions Judge, Tirunelveli is directed to restore the Cr.M.P.No.2 of 2024 to his file and to proceed in accordance with law.



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6. With the above direction, this Criminal Original Petition stands allowed.

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04.09.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

csm

Note : Issue order copy today (04.09.2024)

To

- 1.The III Additional Sessions Judge,
Tirunelveli.
- 2.The Sub Inspector of Police,
Thalaiyuthu Police Station,
Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

csn

Order made in
Crl.O.P.(MD)No.14803 of 2024

Dated: 04.09.2024