



Crl.O.P.(MD)No.15676 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.09.2024

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THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.15676 of 2024

1.S.Kalaiyarasan

2.M.Shek Dhawuth

3.S.Gokulnath

4.S.Seeni @ Seenivasan

... Petitioners

Vs.

1.The Deputy Superintendent of Police,
Karur Range, Karur District.

2.The Inspector of Police,
Velayuthampalayam Police,
Karur District.
Crime No.778 of 2020

... Respondents

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, to call for the records of the order made in Crl.M.P.No.306 of 2024 in S.C.No.48 of 2021 on the file of the District Court, Karur District dated 05.06.2024 and set aside the same and direct the trial Court to recall P.Ws.1, 9, 10, 11 and 22 for cross examination.



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For Petitioners : Mr.K.Palamurugan
For Respondents : Mr.P.Kottai Chamy
Government Advocate (Crl. Side)

ORDER

This criminal original petition has been filed seeking orders to set aside the order made in Crl.M.P.No.306 of 2024 in S.C.No.48 of 2021 on the file of the District Court, Karur District dated 05.06.2024 and to direct the trial Court to recall P.Ws.1, 9, 10, 11 and 22 for cross examination.

2.The petitioners, who are accused Nos.1, 4, 5 & 8, are facing a case in S.C.No.48 of 2021 for the offence under Sections 147, 148, 302, 120B, 149 IPC and Section 3(2)(v) of SC/ST (POA) Act, 1989.

3.It is not in dispute that out of 54 witnesses, 35 witnessed came to be examined. When the case was pending for examination for further witnesses, the present petition came to be filed to recall P.Ws.1, 9, 10, 11 and 22 for cross examination. The learned trial Judge taking note of the



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objection raised by prosecution has passed the impugned order dismissing the petition. It is evident from the records P.W.1 to P.W.10 were examined in chief on 05.03.2024, and P.W.11 to P.W.23 were examined in chief 06.03.2024.

4.The main contention of the petitioners is that the present counsel has entered into appearance on 05.03.2024 and the earlier counsel has failed to cross examine the witnesses and that since the above witnesses are material witnesses, they have filed a petition to recall them, but the learned trial Judge, without considering the above aspect, has dismissed the petition.

5.Filing change of vakalat on the trial date cannot be taken as valid or sufficient ground to adjourn the matter for cross examination. Considering the facts and circumstances of the case, the reasons assigned by the learned Judge in dismissing the petition cannot be found fault with.



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6.At this juncture, the learned counsel appearing for the petitioners would submit that the petitioners are restricting their prayer only with regard to the recalling of P.W.1 and P.W.11, who are eye witnesses.

7.It is pertinent to note that the petitioners sought for recalling of the said witnesses not for the further cross-examination, but for the cross-examination. Since the petitioners are facing murder case, this Court is of the view that the petitioners should be given one more opportunity to cross examine P.W.1 and P.W.11, but at the same time, this Court is of the further view that the petitioners must be mulcted with costs.

8.In the result, the Criminal Original Petition stands allowed and the impugned order, dated 05.06.2024 passed in Crl.M.P.No.306 of 2024 in S.C.No.48 of 2021 on the file of the District Court, Karur District is set aside in respect of P.W.1 and P.W.11 alone and the petition to recall P.W.1 and P.W.11 is allowed on payment of cost of Rs.3,000/- each to the witnesses and a sum of Rs.10,000/- to the credit of Legal Service Authority attached to Karur District within a period of 10 days from the date of receipt of copy of this order and on payment of process



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fee and batta to the said witnesses and on further condition that the petitioners' side should cross examine the witnesses whenever the witnesses are produced before the Court and in case of the petitioners' failure to cross examine the particular witness, then they will forfeit their rights to cross examine the witnesses. The trial Court is directed to summon P.W.1 and P.W.11 for the purpose of cross examination and complete the examination of the said witness within one month from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed.

26.09.2024

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

- 1.The District Court, Karur District.
- 2.The Deputy Superintendent of Police, Karur Range, Karur District.
- 3.The Inspector of Police, Velayuthampalayam Police, Karur District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

K.MURALI SHANKAR,J.



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