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Crl.O.P.(MD)No.21071 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2024

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THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.(MD)No.21071 of 2024

Bose

.. Petitioner

Vs.

1. The Inspector of Police
Mudukulathur Police Station
Ramanathapuram District

2. Rajendran
3. Kalanithi
4. Madathi
5. Pandi
6. Thamilarasan
7. Ilayaraja
8. Prakashan
9. Muthuvel

.. Respondents

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, to call for the records pertaining to impugned order dated 23.02.2024 in Crl.MP. No. 296 of 2024 in S.C.No. 106 of 2020 passed by the Hon`ble Principal Sessions Judge, Ramanthapuram and set aside the same.

For Petitioner	: Mr.M.Dinesh Hari Sudarsan
For Respondents	: Mr.K.Sanjai Gandhi
No.1	Government Advocate(Crl.Side)



ORDER

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The petitioner/A1 has filed this petition challenging the order passed in Crl.M.P. No.296 of 2024 in S.C. No.106 of 2020 by the learned Principal Sessions Judge, Ramanathapuram. By an order dated 23.02.2024 the trial Court allowed the petition filed by the prosecution under Section 311 of Cr.P.C., to examine Dr.Lokeswaran who treated the injured in this case who was attached to the Government Hospital, Mudhukulathur.

2. The contention of the petitioner is that in this case there are totally 14 witnesses. P.W14 is the investigation officer who was examined on 28.11.2023 and on that day the petitioner had cross examined P.W.14 and P.W.14 admitted that the Special Sub Inspector of Police who handed over the investigation to the investigation officer had neither informed nor collected any documents with regard to the injured who had taken treatment in the Government Hospital, Mudhukulathur. Further the doctor who treated the injured had not been shown as witness in the witness list. P.W.14 answers that only on the examination of the doctor, the time, nature of injuries, manner of attack can be confirmed and prosecution had filed this petition which is not proper. He further relied on the decision of the Hon'ble Apex Court in the case of ***Mannan Sk & Ors .vs. State of***



West Bengal and Anr reported in ***AIR 2014 Supreme Court, 2950***,

wherein the Hon'ble Apex Court has held that, it should not cause prejudice to the accused. It should not permit the prosecution to fill up the lacuna or it is for just decision of a case depends on facts and circumstances of each case. In this case the cross examination of the investigation officer, filing of 311 of Cr.P.C petition to examine doctor is nothing but to fill up lacuna by the prosecution which cannot be permitted.

3. The learned Government Advocate(Crl.Side) opposed the petitioner's contention stating that in this case Dr.Logeswaran who is attached to the Government Hospital, Mudhukulathur treated the injured immediately after the occurrence. In this case apart from other offences, offences under Section 324 and 326 of IPC are charged . For proving the case under Sections 324 and 326 of IPC the examination of doctor and medical records are very much necessary. The investigation officer confirm that the Sub Inspector of Police who enquired the case earlier not collected medical records and medical records are public documents maintained in the hospital which are very much available in the Government Hospital can be produced and the doctor who to be examined. It is only in the interest of justice such examination of persons



and production of documents is necessary. It will be beneficial to the petitioner to clarify with regard to the injuries with the doctor and the petitioner can cross examine the witnesses and hence no prejudice caused. Further submitted the line of demarcation is very thin with regard to filling up of lacuna and to arriving at just decision and the trial Court considering all those aspects had rightly allowed the petition filed by the prosecution.

4. It is seen that the trial court by well reasoned order permitted the prosecution to examine doctor Lokeswaran. Though it might be after examination of the investigation officer but still the trial is in progress. At this stage calling or recalling of witness cannot be for filling up lacuna. The examination of Government Doctor who treated the victims, issued medical records cannot be termed as after thought for filling up lacuna. Examining medical witness is only to arrive at a just decision of the case.

5. In view of the same this Court finds to interfere with the order passed by the learned Principal Sessions Judge, Ramanathapuram Crl.M.P. No.296 of 2024 and the petition is liable to be dismissed.



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6. Accordingly the Criminal Original Petition stands dismissed.

04.12.2024

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

1. The Principal Sessions Judge, Ramanthapuram
2. The Inspector of Police
Mudukulathur Police Station
Ramanathapuram District
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.NIRMAL KUMAR,J.

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