



Crl.O.P.(MD)No.20030 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.11.2024

CORAM

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.(MD)No.20030 of 2024

and

Crl.M.P.(MD)No.12362 of 2024

1.Kattiayan

2.Alagarsamy @ Alagar

... Petitioners

Vs.

State, Rep. by its,
The Inspector of Police,
Melattur Police Station,
Thanjavur District.
(Crime No.16 / 2015)

... Respondent

PRAYER : Criminal Original Petition filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, praying to set aside the order passed by the learned Additional Subordinate Judge, Thanjavur, in Crl.M.P.No.1 of 2024, dated 14.06.2024, in S.C.No.1 of 2017 and allow this Petition.

For Petitioners : Mr.R.Maheswaran

For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor



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ORDER

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The petitioners, A1 and A2, who are the driver and the owner of the lorry bearing Registration No.TN-60-9477, are being prosecuted for offences under Sections 379, 307, and 506(ii) I.P.C. read with Section 21(1) of the Mines and Minerals Act.

2. The case against the petitioners is that, on 06.03.2015, in the early hours, P.W.1 (the Village Administrative Officer) and P.W.2 (the Village Assistant) were keeping watch over sand theft activities. At that time, they found the lorry loaded with river sand. When they questioned the petitioners, the first petitioner threatened to run over them with the lorry, and the second petitioner, showing an Aruval, also threatened them. Both petitioners then escaped from the scene of the occurrence. In this case, P.W.1 and P.W.2 were examined on 04.12.2023, P.W.3 and P.W.4 were examined on 03.01.2024, and P.W.5 (the Investigating Officer) was examined on 18.03.2024. However, none of the witnesses have been cross-examined.



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3. The counsel who was leading the case previously had fallen ill, and later, the present counsel filed a petition to recall the witnesses. The trial Court, noting the inordinate delay, commented on the recall petition, including P.W.3, which was identified as a typographical error. The petitioners' intention was only to recall P.W.1, P.W.2, and P.W.5, not P.W.3. However, the trial Court focused on the typographical error and dismissed the petition, implying that it was filed due to non-application of mind.

4. The petitioners, who are facing capital punishment, must have the opportunity to test the evidence through cross-examination. Without this opportunity, their right to a proper defence would be compromised.

5. The learned Additional Public Prosecutor submitted that the occurrence took place on 06.03.2015, and the charge sheet was filed in 2015. However, the case could not be committed promptly due to the petitioners' repeated absences. Ultimately, the case was committed to the Court of Sessions in 2017. For the past five years, the trial has been delayed due to the petitioners' dilatory tactics. There are five witnesses in



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total: P.W.1 and P.W.2 are the eyewitnesses; P.W.3 and P.W.4 are witnesses for the arrest and recovery; and P.W.5 is the Investigating Officer. P.W.3 and P.W.4 have not supported the case of the prosecution. The petitioners have unnecessarily delayed and prolonged the proceedings.

6. The learned counsel for the petitioners submitted that the petitioners are ready to abide by any conditions and will cross-examine the witnesses on the day of their appearance, without seeking further time, ensuring that they will not cause any further delay.

7. Considering that the petitioners are facing a sessions trial and the witnesses have not been cross-examined, and that the evidence cannot be tested without cross-examination, this Court is inclined to permit the petitioners to recall P.W.1, P.W.2, and P.W.5 (the Investigating Officer) for cross-examination. The petitioners are directed to cross-examine the witnesses upon their appearance, without delay. The petitioners shall deposit a sum of Rs.10,000/- each as costs to each witness, totaling Rs.30,000/-, within ten days from today. On such



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deposit of Rs.30,000/-, the trial Court shall recall the witnesses and permit the petitioners to cross-examine them, and the costs shall be paid to the witnesses upon their appearance. The petitioners shall cross-examine the witnesses without any further delay. The entire process of cross-examination shall be completed within two weeks from the date of payment of the costs.

8. With the above direction, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes / No
Index : Yes / No
smn2

18.11.2024

To

- 1.The Additional Subordinate Judge,
Thanjavur.
- 2.The Inspector of Police,
Melattur Police Station,
Thanjavur 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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Order made in
Crl.O.P.(MD)No.20030 of 2024

Dated: 18.11.2024