



*Crl.O.P.(MD)No.18795 of 2024*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.11.2024

CORAM

**THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR**

Crl.O.P.(MD)No.18795 of 2024

and

Crl.M.P.(MD)No.11660 of 2024

Seenivasan

... Petitioner

Vs.

State of Tamil Nadu,  
Rep. by the Inspector of Police,  
Fort Police Station (L & O),  
Trichy.  
(Crime No.1450 of 2011)

... Respondent

**PRAYER :** Criminal Original Petition filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for records pertaining to the order dated 05.06.2024, made in Cr.M.P.No.10088 of 2024 in C.C.No.147 of 2012, pending on the file of the Judicial Magistrate Court No.I, Trichy.

For Petitioner : Mr.M.Suresh

For Respondent : Mr.K.Sanjai Gandhi  
Government Advocate  
(Criminal side)



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### **ORDER**

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The petitioner/accused, in C.C.No.147 of 2012, facing trial for offences under Sections 420 and 506(i) of the I.P.C., has filed a petition in Cr.M.P.No.10088 of 2024 under Section 311 Cr.P.C. to recall P.W.1, P.W.2, P.W.4, P.W.5, and P.W.6 for cross-examination. The trial Court, however, dismissed the petition, observing that P.W.1, P.W.2, and P.W.4 were examined on 15.12.2016 and 13.08.2018, while P.W.5 and P.W.6 were examined on 04.08.2022. The petition was filed after an unreasonable delay, and the Court noted that the petitioner had provided no valid reason for the delay other than the change of counsel, which the Court considered improper.

2. The learned counsel for the petitioner submitted that the petitioner has been facing trial for a long time and was under the *bona fide* impression that his previous counsel would manage the case properly. The petitioner asserts that he was not informed about the progress of the case and, whenever he inquired, the former counsel assured him that everything was in order. Only later did the petitioner discover that none of the witnesses had been cross-examined. On realizing this, the petitioner took back the case bundle and engaged new



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counsel. After reviewing the evidence, the new counsel found that cross-examination of P.W.1, P.W.2, P.W.4, P.W.5, and P.W.6 was essential to avoid significant prejudice to the petitioner. The petitioner submitted that without cross-examination, he would be deprived of the opportunity to raise a proper defense.

3. The learned counsel further submitted that during the period from 2020 to 2022, the Courts were closed due to the Covid-19 pandemic, which caused intermittent Court closures and contributed to the delay in proceedings. The petitioner also pointed out that, upon the witnesses' appearance, they should be cross-examined on the same day without further delay.

4. The learned Government Advocate (Criminal side) opposed the petition, emphasizing that the trial Court had rightly dismissed the petition in a well-reasoned order. The learned Government Advocate pointed out that P.W.1, P.W.2, and P.W.4 were examined in 2016 and 2018, while P.W.5 and P.W.6 were examined in 2022. The petition was filed more than four years after the last witness was examined. The



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prosecution, which is facing pressure from both its higher authorities and the Court due to the case being pending for over 12 years, submitted that allowing the petition would further delay the already long-pending trial. Therefore, the learned Government Advocate (Criminal side) prayed for dismissal of the petition.

5. This Court finds that P.W.1, P.W.2, P.W.4, P.W.5, and P.W.6 are all local witnesses available for cross-examination. It is evident that the petitioner has not cross-examined any of the witnesses so far. While the delay is attributable to the petitioner's previous counsel, the petitioner should not suffer as a result of that mistake.

6. The fundamental principle of criminal justice is that the accused must be given an opportunity to defend themselves. This right of defense is primarily exercised through cross-examination, which cannot be denied to the petitioner. The trial Court's reference to a decision concerning the Prevention of Corruption Act, 1988, may not be directly applicable to this case. Therefore, this Court finds that cross-examination of the witnesses is necessary to ensure a just and fair trial.



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7. In light of this, this Court directs the petitioner to deposit Rs.10,000/- as costs for each of the five witnesses, totalling Rs.50,000/- (Rupees Fifty Thousand only), within ten days from the date of receipt of a copy of this order. It is made clear that no further extension of time will be granted. The witnesses shall be examined on their appearance without giving any further reasons for their non-appearance. If the petitioner fails to cross-examine any of the witnesses, it will be deemed that he has waived his right to cross-examine them. The trial Court is directed to proceed with the case and complete the trial, including the examination of P.W.1, P.W.2, P.W.4, P.W.5, and P.W.6, within one month thereafter.

8. In the result, this Criminal Original Petition is allowed and the order dated 05.06.2024, made in Cr.M.P.No.10088 of 2024 in C.C.No. 147 of 2012, on the file of the Judicial Magistrate Court No.I, Trichy, is set aside. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes / No  
Index : Yes / No  
smn2

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To  
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- 1.The Judicial Magistrate No.I,  
Tiruchirappalli.
- 2.The Inspector of Police,  
Fort Police Station (L & O),  
Trichy.
- 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.18795 of 2024

Dated: 13.11.2024