



Crl.O.P(MD) No.21905 of 2024

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)**

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Date: 13.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

**Crl.O.P(MD) No.21905 of 2024
and Crl.M.P(MD) No.13588 of 2024**

Muniyasamy Alias Moorthy

... Petitioner

Vs.

The State of Tamil Nadu
Represented by its
The Inspector of Police,
Panagudi Police Station,
Panagudi, Tirunelveli District
(Crime No.428 of 2022)

... Respondent

PRAYER: Criminal Original Petition filed under Section 528 of BNSS., Act to call for the records pertaining to the impugned order passed in Cr.M.P.No.34 of 2024 in S.C.No.155 of 2023, dated 11.09.2024 on the file of learned Assistant Sessions Judge, Valliyoor and set-aside the same.

For Petitioner : Mr.P.Ponraj

For Respondent : Mr.A.Thiruvadi Kumar

Addl.Public Prosecutor



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ORDER

The petitioner/Accused in S.C.No.155 of 2023 facing trial for offences under Sections 294(b), 307, 324, 506(2) IPC has filed a petition under Section 311 of Cr.P.C by order dated 11.09.2024 dismissed the same, against which, the present petition has been filed.

2.The contention of the petitioner is that the petitioner has filed a recall petition to recall the witnesses PW1 to PW8 for cross examination. The petitioner could not cross examine the witnesses earlier, since he was detained under Act 14, 1982 and the witnesses have been examined during his detention period from 19.06.2023 to 06.07.2023. The petitioner's detention period was quashed in HMOP(MD) No.86 of 2023 on 20.07.2023. Thereafter, he had filed a petition to recall the petition seeking to cross examine the witnesses and the same was allowed. However, except PW1 and PW2, who are the injured and main witnesses, other witnesses were produced and the trial Court compelled the petitioner to cross examine those witnesses. The petitioner refused to cross-examine those witnesses, due to fear of exposure of defence. The trial Court failed to consider the same and



closed the witnesses and then, the case was posted for argument.

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3.At this stage, the petitioner had filed this petition stating that the petitioner is facing charges of serious offence and hence, cross examination of witnesses is very much essential for the petitioner, otherwise, his constitutional right would get affect. In order to prove his defence, he has to necessarily cross examine the witnesses, particularly PW1 and PW2. The trial Court failed to consider the request of the petitioner and forced him to cross examine the other witnesses, instead of producing PW1 and PW2, who are avoiding to appear before the trial Court for the reason that they fear harm, which cannot be considered in the absence of any materials.

4.Further, case is posted on 19.12.2024 for argument. Hence, it is necessary to set aside the impugned order and permit petitioner to recall PW1 to PW8 and cross examine them.

5.The learned Additional Public Prosecutor submitted that in this case, the trial Court has permitted the petitioner to cross examine PW1



to PW8. However, the petitioner failed to cross examine those witnesses, stating that PW1 and PW2 have to be cross examined firstly, thereafter, other witnesses and hence he has not cross examined the produced witnesses. Hence, evidence closed and posted for arguments. Again the petitioner filed another petition to recall PW1 to PW8 and the trial Court allowed the petition by imposing a cost of Rs.2,000/- each to the witnesses. Though the petitioner paid a sum of Rs.16,000/-, but again failed to cross-examine the witnesses, since PW1 and PW2 not produced. The petitioner is successfully dragging on the case and due to the attitude of the petitioner, the witnesses are suffering. However, he fairly conceded that the petitioner is facing serious charges. Hence, chance may be given to the petitioner with stringent conditions.

6.The learned counsel for the petitioner would submit that he would ready to cross examine the witnesses immediately without delay. However, he has to cross examine PW1 and PW2 at the first instance and then to cross examine the other witnesses.



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7.In view of the above facts, it is true that the witnesses can be tested only by way of their cross examination and it would be beneficial for the trial Court to arrive at a best decision based on their cross examination.

8.In the result, this petition is allowed and the impugned order in Cr.M.P.No.34 of 2024 in S.C.No.155 of 2023, dated 11.09.2024 is set aside, on payment of cost of Rs.10,000/- to the credit of Valliyoor Bar Association, Valliyoor. The Respondent is directed to produce the witnesses PW1 to PW8 on 19.12.2024 or any other following day and on their appearance, the petitioner shall cross-examine them without any delay, Consequently, connected miscellaneous petition is closed.

13.12.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
PNM

To

1. The Assistant Sessions Judge, Valliyoor
- 2.The Inspector of Police,
Panagudi Police Station, Panagudi, Tirunelveli District
- 3.The Additional Public Prosecutor
Madurai Bench of Madras High Court, Madurai



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M.NIRMAL KUMAR, J.

PNM

ORDER IN

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