



Crl.O.P.(MD)No.20083 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.11.2024

CORAM

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.(MD)No.20083 of 2024
and Crl.M.P(MD).No.12408 of 2024

1.Kesavan
2.Pandidurai
3.Jeeva @ Ramji
4.Jerafin
5.John Antonyraj

... Petitioners

Vs.

State of Tamil Nadu,
rep., by the Inspector of Police,
South Police Station,
Thanjavur District.
Crime No.192 of 2015

... Respondent

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, 2023, to set aside the order made in Crl.M.P.No.104 of 2023 in S.C.No. 31 of 2017 on the file of the Principal Assistant Sessions Judge, Thanjavur, pending on the file of the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur.

For Petitioners : Mr.M.Karunanithi

For Respondent : Mr.A.Thiruvadikumar
Additional Public Prosecutor



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ORDER

The petitioners, who are accused 1 to 5 and facing trial in S.C.No. 31 of 2017 for the offence under Sections 147, 148 and 120(b), 201, 307 r/w 109 of IPC, has filed a recall petition under Section 311 Cr.P.C to recall P.W.1 to P.W.3 in Cr.M.P.No.104 of 2023 and the same was dismissed on 18.04.2023, against which, the present original petition has been filed.

2. The contention of the learned counsel for the petitioners is that the petitioners are facing charges of serious offences including under Section 307 of IPC. Now, the case is posted for cross-examination of Investigating Officer on 29.11.2024, before that, the petitioner to recall P.W.1 to P.W.3 and cross-examine them. The primary ground is that earlier counsel was not much experienced and hence, the present counsel has been engaged and come into picture, for that reason, the learned counsel states that recall of witness is very much important for further cross-examination, which has not been considered by the trial court. The trial Court merely recording that P.W.1 was examined on 15.11.2019 and



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cross examined. P.W.2 and P.W.3 examined on 01.02.2020 and cross-examined, thereafter filing this petition is nothing but to cause harassment to the witnesses and further to protract the proceeding and hence, dismissed, is not proper.

3. The learned Additional Public Prosecutor opposed the petition stating that the petitioners failed to demonstrate on what basis, witnesses to be recalled. It is not in dispute that P.W.1 was examined on 15.11.2019 and P.W.2 and P.W.3 examined on 01.02.2020. All the witnesses have been cross-examined by the petitioners/accused. Nowhere the petitioners/accused have stated on what aspect the cross-examination to be done and how prejudice is caused to the petitioners, on the other hand, the only submission is that new counsel had stepped into the case and for that reason, the petition cannot be allowed. He further submitted that in this case order has been passed on 18.04.2023 and the present petition has been filed before this Court on 13.11.2024. Now, the other witnesses examined and in this case, L.W.16/Investigating Officer is only to be examined, at this stage, allowing this petition would amount to reopening the entire case and further delay would be caused.



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The trial Court has given reasons and rightly dismissed the same. Hence, opposed this petition.

4. Finding that the witnesses have been examined two years before and they have been cross-examined in detail, and now Investigating Officer is to be examined. Further, 311 of Cr.P.C., petition has been dismissed on 18.04.2023 and it is almost 1 ½ years, thereafter, the present petition has been filed. Hence, this Court finds no reason to interfere with the order of the trial Court. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes / No
Index : Yes / No
Rmk

20.11.2024

To

- 1.The Inspector of Police,
South Police Station,
Thanjavur District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.NIRMAL KUMAR, J.

Rmk

Order made in
Crl.O.P.(MD)No.20083 of 2024

Dated: 20.11.2024