



Crl.O.P.(MD)No.19850 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.11.2024

CORAM

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.(MD)No.19850 of 2024

State, Rep. by
The Inspector of Police,
Nainar Kovil Police Station,
Ramanathapuram District.
(Crime No.18 of 2018)

... Petitioner

Vs.

1.Sentamil Selvan
2.Arumaidurai
3.Ramesh
4.Velu
5.Baluchamy
6.Munisamy

... Respondents

PRAYER : Criminal Original Petition filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records relating to the order passed in Crl.M.P.No.360 of 2022, dated 08.09.2022, in S.C.No.20 of 2020, on the file of the Additional District and Sessions Judge, Paramakudi, Ramanathapuram District, and set aside the same by allowing this Petition.



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

For R2 : Mr.R.Murugan

For R3 : No Appearance

ORDER

This order has to be read in conjunction with and in continuation of earlier proceedings made in the previous listing on 18.11.2024, which reads as follows:-

"The State has preferred this petition, aggrieved by the order passed in Crl.M.P.No.360 of 2021 by the learned Additional Sessions Judge, Paramakudi, allowing the petition filed under Section 311 of the Cr.P.C. by the petitioner, permitting the respondents to recall P.W.1 and P.W.2 for further cross-examination.

2. The contention of the learned Public Prosecutor is that P.W.1 is an eyewitness, and P.W.2 is the son of the deceased, who was immediately present at the scene of occurrence and is able to speak about the incident and the role of the accused. In this case, P.W.1 was examined-in-chief on 08.02.2021 and cross-examined 10 days later, on 18.02.2021. The cross-examination spanned five pages. P.W.2 was examined on 18.02.2021 and cross-examined on the same day. After that, other witnesses



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were examined: P.W.3 on 16.03.2021, P.W.4 on 08.04.2021, P.W.5 to P.W.7 on 26.04.2021, and P.W.8 and P.W.9 on 16.06.2021. At this stage, the petition under Section 311 Cr.P.C. has been filed.

3. However, in the petition, no specific reason has been provided for recalling P.W.1 and P.W.2 for further cross-examination. Furthermore, the impugned order does not provide any reasons or justification for recalling these witnesses. In this case, so far 15 witnesses have been examined. The case is scheduled for further proceedings on 21.11.2024.

4. It is pertinent to note that the alleged offence took place in 2018, and there are totally six accused in this case. Even at the stage of committal, the accused had been absenting themselves and delaying the proceedings. The case was eventually committed and taken on file as S.C.No.20 of 2020. Two years later, the Miscellaneous Petition was filed, and now, another two years have passed. There is no valid reason for recalling P.W.1 and P.W.2 at this stage. The accused are facing charges under Sections 120B, 294(b), 506(i), 342, 302 read with Sections 34 and 109 of the I.P.C.

5. Considering the reasons stated above, this Court is inclined to admit the petition and issue notice to the respondents. The petitioner is also permitted to serve notice to



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the accused and their respective counsels, who are appearing before the trial Court on 21.11.2024.

6. In case a petition under Section 317 of the Cr.P.C. is to be filed on behalf of the accused, notice may still be served to their counsel in advance, in order to avoid unnecessary further delays.

7. Post the matter on 27.11.2024."

2. The learned counsel for the second respondent submitted that there is a vital contradiction in the testimony of P.W.1. Though P.W.1 is projected as an eyewitness, his statement recorded under Section 161 Cr.P.C. indicates that he informed the son of the deceased, P.W.2, and took him to the scene of occurrence. However, in his evidence, P.W.1 states that he took the injured/deceased to his house and subsequently informed P.W.2. This contradiction must be put to both witnesses, P.W.1 and P.W.2. Furthermore, the deceased was sent in a 108 Ambulance. Since P.W.1 and P.W.2 are shown as eyewitnesses and were present at the scene of occurrence, they should have accompanied the deceased in the ambulance. This aspect should also be addressed during the examination of P.W.1 and P.W.2.



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3. To support his argument, the learned counsel for the second respondent referred to the judgment of the Hon'ble Supreme Court in **P.Sanjeeva Rao vs. State of Andhra Pradesh**, reported in **2012 (7) SCC 56**, wherein the Hon'ble Supreme Court held that the decision to recall a witness for cross-examination depends on the nature of the deposition and whether it incriminates the accused. The purpose of cross-examination is to ascertain the truth and give the accused an opportunity to prove their innocence.

4. The learned counsel for the second respondent further relied on the decision of the Hon'ble Supreme Court in **Natasha Singh vs. Central Bureau of Investigation (State)**, reported in **2013 (5) SCC 741**, wherein the Hon'ble Supreme Court emphasized that the power under Section 311 Cr.P.C. must be exercised judiciously and not arbitrarily, to help the Court determine the truth and deliver a just decision.

5. The learned Additional Public Prosecutor appearing for the State refuted these contentions, contending that P.W.1 was examined in chief on 08.02.2021 and cross-examined on 18.02.2021. The cross-



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examination of P.W.1 was detailed, and the contradictions pointed out by the second respondent's counsel were already raised during the cross-examination. These contradictions were not put to the Investigating Officer, but they can be addressed during the examination of the Investigating Officer, who has yet to be examined. Therefore, no prejudice will be caused to the respondents, as they will have the opportunity to cross-examine the Investigating Officer.

6. The learned Additional Public Prosecutor further submitted that the trial Court had already considered the petitioner's arguments. However, the trial Court passed a cryptic order without providing justifiable reasons for permitting the recall of P.W.1 and P.W.2. The learned counsel for the second respondent has failed to specify how the respondents would be prejudiced or identify the vital questions that were left unanswered. Therefore, the learned Additional Public Prosecutor prayed for the present Criminal Original Petition to be allowed.

7. Considering the above submissions and on perusal of the materials on record, it is seen that the examination of witnesses began in



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2021, specifically on 08.02.2021 and 18.02.2021. After the examination of P.W.1 and P.W.2, most of the prosecution witnesses were examined, and cross-examination was completed by the defence. The trial is now at the stage of examining official witnesses. The respondents' belated petition under Section 311 Cr.P.C. seems intended to delay the proceedings and harass P.W.1 and P.W.2, possibly pressuring them to become hostile to their earlier statements.

8. The decision cited by the learned counsel for the second respondent, **P.Sanjeeva Rao vs. State of Andhra Pradesh**, pertains to a case under Section 13(1)(d) of the Prevention of Corruption Act, where a statutory presumption was operating against the petitioner, necessitating an explanation. This is not applicable to the facts of the present case.

9. In light of the above, this Criminal Original Petition is allowed, and the order passed by the learned Additional District and Sessions Judge, Paramakudi, Ramanathapuram District, in Crl.M.P.No.360 of 2022, dated 08.09.2022, is set aside.



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10. The occurrence took place in 2018, and the charge sheet was filed two years later, in S.C.No.20 of 2020. Therefore, the trial Court is directed to conclude the trial within three months from the date of receipt of a copy of this order, and if necessary, to conduct the trial on a day-to-day basis.

27.11.2024

NCC : Yes / No
Index : Yes / No
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To

- 1.The Additional District and Sessions Judge,
Paramakudi, Ramanathapuram District.
- 2.The Inspector of Police,
Nainar Kovil 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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Order made in
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