



Crl.O.P.(MD)No.20651 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.20651 of 2024

1.Arumugam @ Vijayan
2.Patchaimal
3.Starvin Raj

... Petitioners

Vs.

The Inspector of Police,
Mandaikadu Police Station,
Kanyakumari District.

... Respondent

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, 2023, to set aside the order passed in M.P.No.10 of 2024 in CC.No.393 of 2003 dated 16.10.2024 on the file of the learned Judicial Magistrate Court, Eraniel, Kanyakumari District.

For Petitioners	: Mr.G.Sulthan Sha
For Respondent	: Mr.A.Thiruvadikumar Additional Public Prosecutor

ORDER

The petitioners, who are A1, A2 and A8 and facing trial in CC.No. 393 of 2003, had filed a petition under Section 311 of Cr.P.C., to recall P.W.1 to P.W.3, P.W.17 and P.W.26 in M.P.No.10 of 2024. The trial



Crl.O.P.(MD)No.20651 of 2024

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Court by order dated 16.10.2024 had dismissed the same, against which, the present petition has been filed.

2. The contention of the petitioners is that for the past 20 years, 340 witnesses have been examined and now, the official witnesses are being examined. For the past twenty years, the prosecution has taken time to examine the witnesses. For the delay caused by the prosecution, the petitioners cannot be penalized.

3. The learned Additional Public Prosecutor strongly opposed the petition stating that the petitioners are protracting the proceedings by giving one reason or other. In this case, FIR came to be registered in the year 1999, after investigation, charge sheet has been filed in the year 2003, it is almost 21 years from the date of filing of charge sheet, still the trial is to be completed. Initially, there were 11 witnesses in this case, four of them have passed away and now, seven are facing trial. P.W.1 to P.W.3, P.W.17 and P.W.26 have been cross-examined by the other accused. The petitioner can avail the benefit of this cross-examination. It is not that the evidence of these witnesses are got unchallenged. In this



Crl.O.P.(MD)No.20651 of 2024

case, huge money and gold jewels of the co-operative society has been misappropriated, cheated and theft have been committed by the petitioners along with other accused in criminal conspiracy. Now, the official witnesses are there and soon, the trial can be completed. Now, the petitioners filed the recall petition to protract the proceedings. Hence, opposed the present petition.

4. Considering the facts and circumstances of the case and perused the materials placed, this Court finds that P.W.1 has been examined on 11.06.2015, P.W.2 has been examined on 05.06.2015, P.W.3 has been examined on 11.06.2015, P.W.17 has been examined on 16.07.2015 and P.W.26 has been examined on 03.09.2015. In this petition, the petitioners have not stated on what reason these witnesses could not be cross-examined for such long years, no reason have been given. Further, the petitioners had not shown what are the questions to be put to the witnesses, which have been left over and how they are prejudiced, nothing has been done. Further, in this case, it is seen that these witnesses already cross-examined by other accused. In view of the same, the petitioners can take the benefit on their cross-examination and no



Crl.O.P.(MD)No.20651 of 2024

prejudice to be caused to the petitioners and further, case is kept pending for more than 21 years. Hence, this Court finds no reason to interfere with the well reasoned order of the trial Court. Accordingly, this Criminal Original petition is dismissed.

NCC : Yes / No
Index : Yes / No
Rmk

27.11.2024

To

- 1.The Judicial Magistrate Court, Eraniel, Kanyakumari District.
- 2.The Inspector of Police,
Mandaikadu Police Station,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.O.P.(MD)No.20651 of 2024

M.NIRMAL KUMAR, J.

Rmk

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Crl.O.P.(MD)No.20651 of 2024

Dated: 27.11.2024