



Crl.O.P.(MD)No.21309 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.12.2024

CORAM

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.(MD)No.21309 of 2024

and

Crl.M.P(MD)No.13221 of 2024

Muthukumar

.. Petitioner/A1

Vs.

The State Rep. by
The Inspector of Police,
Nesamani Nagar Police Station,
Kanniyakumari District.
Crime No.414 of 2021

... 1st Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, to set aside the order dated 18.11.2024 made in C.M.P.No.9 of 2024 in S.C.No.211 of 2023 on the file of the learned Principal Sub Court, Nagercoil.

For Petitioner : Mr.J.Senthil Kumaraiah
For Respondent : Mr.K.Sanjai Gandhi
Government Advocate (Crl. side)

ORDER

The petitioner/A1, who is facing trial in S.C.No.211 of 2023 on the file of the learned Principal Sub Court, Nagercoil, for the offences under



Sections 341, 294(b), 307, 427, 392, 323 and 506(ii) of IPC, has filed this petition.

2.The contention of the petitioner is that the petitioner had engaged a counsel, but he had not cross examined the witnesses. Further, the petitioner had collected certain documents, since he has been falsely implicated in this case. The petitioner, previously, had some cases against him. For that reason, the above case has been foisted against him. Hence, some materials have to be collected to call for the witnesses. For that reason, the witnesses could not be cross examined.

3.The learned Government Advocate (Crl. side) strongly opposed the petitioner's contention stating that P.W.1 and P.W.2 had examined on 20.09.2024, P.W.4 on 27.09.2024 and P.W.5 on 18.10.2024. The petitioner had already engaged a counsel, but he had not taken steps to cross examine the witnesses. In this case, P.W.1 and P.W.2 are the injured witnesses, P.W.4 is the witness and P.W.5 is the Doctor. The petitioner is a habitual offender, having five cases, of which, four cases are similar nature and he is also a history sheeter, having H.S.No.3 of 2016. In this case there are two accused, both A1 and A2, who have not cross examined any of the



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witnesses. Today, the case is posted for examination of the Investigating Officer and the evidence is being recorded in chief. If the petitioner is permitted to recall, it would only further delay and the trial would commence afresh. He fairly submitted that the petitioner had not cross examined any of the witnesses.

4.Considering the submissions and perusal of the materials, it is seen that the petitioners are facing the charges, which are serious in nature, the evidence is completed only when the evidence is tested by way of cross examination. In this case, though the petitioners might be the history sheeter having previous cases, that cannot be a reason to deny the petitioner's right to cross examination, which is a statutory right.

5.In view of the above, this Criminal Original Petition is allowed and the order passed in C.M.P.No.9 of 2024 in S.C.No.211 of 2023 by the learned Principal Sub Court, Nagercoil, dated 18.11.2024, is set aside. The witnesses are permitted to be recalled. The petitioner is permitted to cross examine the witnesses as and when the witnesses are present without giving any reasons. Further, the petitioner is directed to deposit a sum of Rs.2000/- to the credit of S.C.No.211 of 2023 on the file of the learned



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Principal Sub Court, Nagercoil and the same can be utilised by the trial Court for payment of batta to the witnesses. The process of recalling the cross examination is to be completed within a period of two months from the date of receipt of a copy of this order. Though A2 in this case has not filed any 311 of Cr.P.C. application, he has to be given an opportunity for cross examination, if he so desires. It is made clear that later A2 cannot have any petition for a similar prayer. Consequently, connected miscellaneous petition is closed.

05.12.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
sjj

To

- 1.The Principal Sub Court, Nagercoil.
- 2.The Inspector of Police,
Nesamani Nagar Police Station,
Kanniyakumari 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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