



CRL.O.P(MD)No.23434 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.12.2023

Pronounced on : 06.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

CRL.O.P(MD)No.23434 of 2023

and

CrI/M.P(MD)No.18199 of 2023

Raman

... Petitioner

Vs.

State represented by
The Inspector of Police,
Vigilance and Anti Corruption,
Thanjavur.
(Crime No.2 of 2024)

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records pertaining to the impugned order passed by the Chief Judicial Magistrate, Thanjavur at Kumbakonam in Cr.M.P.No.461 of 2023 in Spl.Case No.7 of 2015, dated 18.07.2023 and to set aside the same in respect of dismissal portion regarding recalling of P.W.1 and to direct the Chief Judicial Magistrate to provide an opportunity to the petitioner to recall and re-examine the P.W.1 within the time stipulated by this Court.



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For Petitioner : Mr.S.Venkatesan

For Respondent : Mr.B.Nambi Selvan
Additional Public Prosecutor

ORDER

This Criminal Original Petition is filed to call for the records pertaining to the impugned order passed by the learned Chief Judicial Magistrate, Thanjavur at Kumbakonam in Crl.M.P.No.461 of 2023 in Spl.Case No.7 of 2015, dated 18.07.2023 and to set aside the same in respect of dismissal portion regarding recalling of P.W.1 and to direct the learned Chief Judicial Magistrate to provide an opportunity to the petitioner to recall and re-examine the P.W.1 within the time stipulated by this Court.

2.The brief facts of the case:

The petitioner is the sole accused in Spl.Case No.7 of 2015 on the file of the learned Chief Judicial Magistrate, Thanjavur @ Kumbakonam. The case is pending for examination of witnesses. At this stage, the petitioner filed Crl.M.P.No.461 of 2023 under Section 311 of Cr.P.C. to recall P.W.1, P.W.3, P.W.4 and P.W.10 for cross examination. This petition was resisted by the prosecution. After considering both side arguments, the trial Court



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partly allowed the petition in respect of witnesses P.W.3, P.W.4 and P.W.10 on condition that the petitioner shall pay Rs.1,000/- each to the witnesses and dismissed the petition in respect of P.W.1. Being aggrieved by the order of partial dismissal of petition, the petitioner preferred this petition.

3. Heard both sides and perused the records in this Criminal Original Petition.

4. The learned counsel appearing for the petitioner has submitted that the petitioner is the Village Administrative Officer, who is facing trial of Spl. Case No.7 of 2015 before the Chief Judicial Magistrate Court, Kumbakonam on the basis of final report filed by respondent police. The prosecution examined as many as 10 witnesses. At the time of chief examination of P.W.1, P.W.3, P.W.4 and P.W.10, the petitioner was unable to cross examine them and so, the petitioner filed the petition under Section 311 of Cr.P.C., the trial Court allowed the same in respect of P.W.3, P.W.4 and P.W.10. It is further submitted that the P.W.1 is the sanctioning authority who is a material witness, at the time of chief examination since the petitioner's counsel had to peruse certain documents and also due to



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boycott, he could not cross examine P.W.1. The cross examination of P.W.1 is essential. The Court is empowered to give opportunity under Section 311 of Cr.P.C. to the defense side to establish his case. The evidence of prosecution is not closed. The trial Court has not considered these aspects and failed to allow the petition for cross examination of P.W.1. The petitioner is ready to abide any stringent condition. Hence, the petitioner may be given an opportunity to cross examine the P.W.1.

5. The learned Additional Public Prosecutor for the respondent contended that the petitioner filed the petition under Section 311 of Cr.P.C. only to drag on the proceedings, because P.W.1 was examined on 06.06.2016 and other three witnesses were examined on 26.02.2020, 11.03.2020 and 15.06.2020. The case is pending for examination of investigating officer and the case was adjourned to 04.01.2024. The petitioner wants to cross examine the P.W.1 after lapse of 7 years, who was admittedly examined on 06.06.2016. P.W.1 is only sanctioning authority and the non cross examination of P.W.1 will not serve any purpose on defense side. Hence, the petition has to be dismissed.



6. On hearing both, it is clear that the petitioner is the sole accused in this case. The petitioner filed the petition under Section 311 of Cr.P.C. for recall of P.W.1, P.W.3, P.W.4 and P.W.10. Among them, recall of P.W.1 was negatived and in respect of others recall petition was allowed. The petitioner submits that at the time of chief examination of P.W.1, his counsel wanted to peruse certain important documents and so P.W.1 could not be cross examined and the cross examination of P.W.1 is essential for the petitioner to prove his defence. It is a settled principle that the accused has every right to putforth his defence and in order to prove his innocence and to substantiate his defence, all opportunity should be given to the accused. P.W.1 is admittedly sanctioning authority as per prosecution. By allowing him for cross examination by the accused, the prosecution will not be prejudiced, moreover the prosecution has liberty to re-examine the witness. The trial Court while allowing the petition for cross examination of P.W.3, P.W.4 and P.W.10 failed to consider the reason assigned by the petitioner to cross examine P.W.1. In the above facts and circumstances this Court feels that the petitioner being the sole accused has to be given an opportunity to cross examine P.W.1 with stringent condition. In the above circumstances, this Court is inclined to allow this petition with condition.



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7.In the result, the Criminal Original Petition is allowed. The order of partial dismissal of Crl.M.P.No.461 of 2023 in Spl. Case No.7 of 2015 dated 18.07.2023 is set aside and the petition in Crl.M.P.No.461/2023 is also allowed in respect of P.W.1 The petitioner is allowed to cross examine P.W.1 on payment of cost of Rs.5,000/- (Rupees Five Thousand only) to the P.W.1 and the petitioner shall complete the cross examination on the same date of appearance of P.W.1 on recall without getting any adjournment. Consequently, the connected Miscellaneous Petition is closed.

06.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
VSD

To

- 1.The Chief Judicial Magistrate,
Thanjavur at Kumbakonam.
- 2.The Inspector of Police,
Vigilance and Anti Corruption,
Thanjavur.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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P.VADAMALAI, J.

VSD

Pre - Delivery Order made in
CRL.O.P(MD)No.23434 of 2023

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