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CrI.O.P.No.32600 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2025

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.O.P.No.32600 of 2024

Manish

... Petitioner

Vs.

State rep .by its

The Inspector of Police

Sirkali Police Station, Mayiladuthurai District

(Crime No.151 of 2021)

... Respondent

Prayer: Criminal Original Petition filed under Section 528 of B.N.S.S. to set aside the order passed by the learned District and Sessions Judge, Mayiladuthurai made in CrI.M.P.No.2683 of 2024 in S.C.No.168 of 2021 on his file dated 09.12.2024 in dismissing the petition filed by the petitioner herein under Section 348 of BNSS.

For Petitioner : Mr.T.Shanmugam

For Respondent : Mr.S.Sugendran
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed by the petitioner to set aside the order passed by the learned District and Sessions Judge,



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Mayiladuthurai in CrI.M.P.No.2683 of 2024 in S.C.No.168 of 2021 dated

09.12.2024 in dismissing the petition filed by the petitioner herein under Section 348 of BNSS/311 of Cr.P.C. to recall the witnesses P.W.1 to P.W.7 for cross examination.

2. Heard both sides and perused the materials available on record.

3. The case of the petitioner is that the petitioner is accused in S.C.No.168 of 2021 on the file of the District and Sessions Judge, Mayiladuthurai and pending same, the petitioner filed a petition in CrI.M.P.No.2683 of 2024 before the District and Sessions Judge invoking Section 348 of BNSS/311 of Cr.P.C. for recalling the witnesses P.W.1 to P.W.16 for the purpose of cross examination. The said petition was dismissed by the trial Court on 09.12.2024 and challenging the same, the petitioner has filed the present petition.

4. A reading of the materials shows that despite giving sufficient opportunities, the petitioner did not availed the opportunities and cross



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examined the witnesses. Though the witnesses were examined in chief in the year 2022 itself, the petitioner did not take effective steps to recall the witnesses within a reasonable time and in one way or other, they accused have protracted the trial and at last, the petitioner has filed the petition to recall the witnesses in the year 2024. The learned trial Judge has elaborately discussed the stage of trial and also the attitude of the petitioner. The offence involved in this case is a day light double murder. Therefore, the trial Court has dismissed the petition. Now the learned counsel for the petitioner submits that the petitioner is ready to abide by any stringent conditions.

5. In this case, the offence itself is grave in nature and there is no guarantee for the witnesses to come to the Court with free movement. The accused and the prosecution are appearing before the Court for some reasons but the witnesses are being dragged without any reason. Recalling the witnesses after a period of a period of three years from the date of occurrence under the guise of reasonable opportunity, is not acceptable. The attitude of the



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petitioner shows that his motive is only to protract the case and thereby trying to turn the witnesses hostile.

6. However, since the witnesses P.W.1 to P.W.16 were not cross examined, in order to give an opportunity to the petitioner, the order passed by the Magistrate in CrI.M.P.No.2683 of 2024 in S.C.No.168 of 2021 dated 09.12.2024 is set aside and the petitioner is permitted the cross examine the witnesses subject to condition that the petitioner shall deposit a sum of Rs.1,60,000/- (Rupees One Lakh Sixty Thousand Only) before the trial Court on or before 30.01.2025. On such deposit, the trial Court is directed to issue summons to the witnesses for their appearance from on 03.02.2025 onwards and complete the cross examination of all the witnesses i.e. P.W.1 to P.W.16 on day to day basis, on or before 28.02.2025.

7. Further, the trial Court is directed to summon the witnesses one by one and on appearance of the witnesses, the counsel for the petitioner is directed to complete the cross examination of the witnesses on the same day of



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their appearance and that the cross examination of the witnesses namely P.W.1 to P.W.16 has to be completed within a period of one month as stated above.

8. The petitioner's counsel should not ask adjournment for cross examination and if the petitioner's counsel/defense counsel fails to cross examine the witness/es when the witness/es is present, the petitioner would lose the right of cross examination.

9. On appearance of the witnesses, the learned trial Judge is directed to pay Rs.10,000/- (Rupees Ten Thousand Only) to each of the witnesses towards their cost.

10. With the above directions, this Criminal Original Petition is disposed of.

02.01.2025

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

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Note:Issue order copy on 08.01.2025.

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To
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1. The District and Sessions Judge,
Mayiladuthurai
2. The Inspector of Police
Sirkali Police Station
Mayiladuthurai District
3. The Public Prosecutor
High Court of Madras



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P.VELMURUGAN. J.

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