

IN THE COURT OF MAGALIR NEETHIMANDRAM (MAHILA COURT),
COIMBATORE.

Present : Tmt.R.Nandhini Devi, M.L., D.P.M.,
Sessions Judge,
Magalir Neethimandram,
(Mahila Court), Coimbatore.

Thursday, the Twenty Seventh Day of October – 2022

CRIMINAL MISCELLANEOUS PETITION No.4802/2022
IN
SESSIONS CASE No.109/2019

Sathiyamoorthy		Petitioner/Accused
- Vs -		
State rep. By The Inspector of Police, E.2 Peelamedu Police Station, Coimbatore Cr.No. 127/2019.		Respondent/Complainant

This petition came before this Court for final hearing on 18.10.2022 and in the presence of Tr. P. Sekar Annadurai, B.Com., B.L., Advocate for Petitioner/Accused and of Tmt.B.Jisha, Special Public Prosecutor represented for the State/Respondent/Complainant, and upon perusing the case records and having stood over for consideration till this day, this Court delivers the following:

ORDER

Petitioner filed for recall of Pw.20 for further cross-examination on the side of defence u/s.311 Cr.P.C.

(2). Averments made in the Petition is as follows:-

This petitioner herein accused in the above Sessions Case. In this case one witness Ganeshpandian has been examined as Pw.20 on

19.9.2022. Some of the vital questions have to be asked at Pw.20 Ganeshpandian , so recall of Pw.20 for further cross-examination is very much essential to defend prosecution case. Hence this petition.

(3). GIST OF THE COUNTER STATEMENT MADE BY RESPONDENT/PROSECUTION :-

This respondent submits that as pointed out by petitioner in his petition, on 19.9.2022 witness ie., Pw.20 Ganeshpandian appeared before this Court, on that day cross-examination done on the side of defence. After that, this petition is filed to protract trial proceeding. This petition is nothing but abuse process of law and lacks of merits.

Whether this petition has to be allowed? It is only point we have to determine in this case.

(4). Heard both side arguments.

(5). Petitioner's Plea:-

Learned petitioner/accused counsel has contended that this accused is implicated under grave offence (murder), He has all right to defend the prosecution case. It is true that on 19.9.2022, Pw.20 Ganeshpandian was subjected to cross-examination. But the same time, some of the vital questions omitted to put at Pw.20. This omission is unintentional. Further this question will reveal truth before this Court. If the petition is dismissed, accused will lose his right to defend prosecution case. Hence, he prays for allowing this application.

(6). Respondent side Submissions :-

To assail this petition learned Special Public Prosecutor for the State has contended that now Pw.20 Ganeshpandian witness is officiating as Sub-Inspector of Police in the Police Station situate within the campus of Hon'ble High Court. Due to lack of Police Personnel, many of the emergency and important work cannot be finished in time. Already Pw.20 Ganeshpandian witness came and deposed evidence on the side of prosecution. So arrival of Pw.20, would not only cause delay in trial proceeding, it would cause much inconvenient to the Station House, where Pw.20 Ganeshpandian is working. So she prays for dismissing this application.

(7). Point for determination by this Court :-

On careful perusal of notes paper and other relevant records it appears, that Pw.20 Ganeshpandian witness had booked this case and placed FIR to Inspector of Police for investigation.

It is needless to mention here that u/s. 311 Cr.P.C "Criminal Court is having wide power it can be used for arrive just conclusion" . Looking notes paper entries, except this Pw.20, all other witnesses had been examined promptly without filing recall petition. So this Court feels that accused has right to take effective defence on his side to disprove prosecution case. Looking previous stage of this case trial proceeding, this

Court considers that this petition is not laid with malafide to drag on trial proceeding. This Court decides that to elicit certain facts before this Court Pw.20 has to come for further cross-examination. But the same time looking witness's working nature, place of work, and distance from Court to his present working place, petitioner side has to pay travel fare and meals expenses of Pw.20 Ganeshpandian witness. With this above observation, this Court inclines to allow this application.

In the result, this petition is allowed subject to the following condition*:-

* This petitioner/accused is directed to pay Rs.2500/-(Two Thousand and Five Hundred only) towards bus and meals fare of Pw.20 Ganeshpandian witness on or before 01.11.2022, failing which this petition would be dismissed on 02.11.2022. Conditional order will be passed on 02.11.2022.

Dictated to the Steno-Typist and transcribed by her, and corrected and pronounced by me in open Court, on this the 27th Day of October- 2022.

Sessions Judge,
Magalir Neethimandram,
(Mahila Court),
Coimbatore.

On either side No Witness examined

And

No Exhibit is Marked.

Sessions Judge,
Magalir Neethimandram,
(Mahila Court),
Coimbatore.