

IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE TIRUPPUR

Present: Mr. V.Pugazhenth, B.L.,
Senior Civil Judge

MONDAY, THE 14th DAY OF NOVEMBER, 2022

E.Cr.L.M.P.No.12003/2022 in
SC No.07/2020

The State represented by
Inspector of Police,
Thirumuruganpoondi Police Station,
Tiruppur.

...Petitioner/Complainant

-Vs.-

Balasubramaniam and 2 others

... Respondent/Accused

This petition is coming on this day for final hearing before this court in the presence of Mr.R.Senthilkumar, Additional Public Prosecutor for the petitioner/complainant and the Advocate Mr.B.Mohan for the Respondent/accused and upon hearing the arguments of both sides and upon perusing the records and having stood over for consideration till this day, this court delivers the following order.

ORDER

This petition has been filed by the petitioner/accused under section 311 of Cr.P.C to recall the PW7 Dr.Kesavamoorthy and to mark the CT Scans pertaining to the grievous injuries sustained by the victims Kumar and his mother Kaliyammal.

BRIEF FACTS OF THE PETITION

01. In this case the accused are charged under section 307 of IPC. The above said case is posted today for the evidence of the Prosecution Witnesses. The prosecution has already examined 7 witnesses including the Doctor. PW4 is the mother of PW1 and she is living with PW1. The witnesses PW1 and PW4 have sustained grievous injury during the occurrence. To prove the grievous nature of the injury the Xray or the CT scan films has to be marked in the trial. The doctor from

KMCH, Coimbatore, who has been examined have categorically stated that the CT Scans of the injured has been handed over to the patients. It is learnt that the CT Scans pertaining to Kaliyammal PW4 and PW1 Kumar, the injured, are in possession of PW1 Kumar. On verification, the witness Kumar PW1 admitted the same and has handed over the CT scans to the police in order to file it before this Court. The said CT Scans of the injured witnesses Kumar and Kaliyammal has to be marked before this Court in order guide this Court to come to a just conclusion. By marking the CT Scans only the Prosecution will be able to prove the grievous nature of the injury sustained by the injured witnesses as per law. If the CT Scans are not allowed to be marked, the prosecution will suffer huge loss and hardship. In the interest of justice the CT Scans of the witnesses Kumar and Kaliyammal has to be marked as exhibits. The CT Scan films of the injured witnesses PW1 and PW4 has to marked as an Additional documents/material object in the above said case and doctor Kesavamoorthy, who treated the injured, who was already examined by the prosecution has to be recalled and to be examined again on the side of prosecution, to substantiate the CT Scan Films issued by KMCH, Coimbatore. Hence the prosecution prayed that this court may be pleased to permit the prosecution to recall the above said witness PW7 Kesavamoorthy, with the aid of section 311 of CRPC in order to mark the CT Scans pertaining tot the grievous injuries sustained by the victims Kumar and his mother Kaliyammal and thus render justice.

BRIEF FACTS OF THE COUNTER

02. The above said case is posted today for the prosecution witness. All the documents of X-Ray and CT Scan filing were already available as spoken by the doctor PW-7 from KMCH, Coimbatore, Investigation officer ought to have seized and produced and filed along with the police report. So all the alleged documents kept in the PW1 Kumar would have been produced at the time of examination of said witness. The alleged documents namely the X-Ray and CT Scan of the injured witness ought to be marked under guise of recalling the witnesses belatedly and fill

up the lacuna which the prosecution is entitled. The petition is devoid of any merits and no copy of the alleged documents were produced already with petition. Hence it is prayed that this court may be pleased to dismiss the petition filed by the petitioner/complainant under section 311 of Cr.P.C. and thus render justice.

POINTS FOR CONSIDERATION

03. Whether this petition deserves to be allowed?

DECISION

04. Arguments advanced by both sides have been heard and available material records have been perused. To prove the nature of injury incurred to the PW1 and PW4, CT Scan of the PW1 and PW4 are material evidence. The investigation officer ought to have collect the CT Scan and filed along with the final report, but he did not. Failure of the investigation officer does not affect the case. The document now attempted to send for is vital document to decide the case. This court consider that no prejudice or harm will cause to the respondent if the petition is allowed. Hence this court decides that the petition deserves to be allowed.

RESULT

05. This petition is allowed and the PW-07 is recalled.

Pronounced by me in open court, this the 14th day of November 2022.

**Sd/-V.Pugazhenth
CHIEF JUDICIAL MAGISTRATE
TIRUPPUR**

Crl.M.P.12003/2022

Dated 14.11.2022

RESULT

This petition is allowed and the
Pw-07 is recalled.

CJM,
Tiruppur.