

**In the Court of Principal Sessions Judge, Kanniyakumari District at
Nagercoil.**

Present : Thiru B. Karthikeyan, B.L.,
Principal Sessions Judge.

Tuesday, the 27th day of August, 2024.

Crl.M.P. No.2/2024 in SC No.21/2024

Petchi @ Esakkimuthu
S/o. Nagarajan

... Petitioner/Accused

/Vs./

The Inspector of Police,
Vadasery Police Station.

... Respondent/Complainant

This petition coming on this day for final hearing before me in
the presence of,

Thiru N. Sivakumar .. Advocate for the petitioner

Thiru P. Linus Raj .. Public Prosecutor for the respondent

and upon hearing both side and upon perusing the materials available on
record, this Court delivered the following:-

ORDER

This petition has been filed u/s 348 of BNSS, 2023 seeking
recall of PW1, PW2, PW3 and PW16 for continuation of cross examination.

2. It would be contended that during investigation, the accused was confronted with the CCTV footage allegedly seized from Sathyam Hospital, Vettoornimadam, Nagercoil to the petitioner and was enquired about the two unknown persons seen in the video who allegedly caused grievous injuries to the deceased Manoj and took him in a two wheeler and left him in an unconscious state in front of Sathyam Hospital, Vettoornimadam and sped away. The petitioner replied to the police officers that they were not known to him. Unable to find the real culprit and succumbing to the mounting pressure put forth by the family of deceased Manoj, the respondent police falsely implicated the petitioner. Claiming that, without proper and fair investigation, the final report has been filed and trial proceedings also came to be issued. Unable to meet the expenses towards advocate fees, the petitioner had sought the appointment of counsel through Legal Aid. Subsequently, he was represented by the Legal Aid counsel. While so, on 07.06.2024, PW1, PW2 and PW3 were examined as prosecution witnesses before this court, during which, the counsel for the petitioner did not cross examine them in full perspective with regard to the concealed CCTV video footage and vital suggestions with regard to the concealed CCTV footage, the people involved in the same, the seizure of the said video, the persons illegally who concealed

the CCTV footage before the court besides the illegal forcible tampering and manipulation of patient records in Sathyam Hospital and other relevant particulars in connection with the concealed CCTV video footage were not asked during the cross-examination. Claiming that the cross examination of PW1, PW2 and PW3 with regard to the concealed CCTV video footage is essential in order to prove the petitioner's case and his innocence before the court, the present petition has been filed. Claiming that, with the income that he generated now from the daily labour work and assistance of relatives, he has engaged the private counsel now to represent him, he has come up with the present petition, undertaking to cross examine the witnesses in one day, without causing any further delay to the case proceedings. This apart, he would also claim that on 12.07.2024, when the Investigation Officer was examined as PW16, as the advocates went on boycott, he could not get the witness cross examined. Claiming thus, the present petition has been filed.

3. The respondent filed a detailed counter in and by which, it would be contended that the occurrence was seen by PW1 to PW3 and the injured was taken to Sathyam Hospital, Vettoornimadam by PW1 and PW8 and no CCTV footage was seized from Sathyam Hospital by the Investigating Officer as alleged by the petitioner and there are several direct witnesses to prove the prosecution case and there is no necessity to recover the CCTV

footage from the hospital. It would be further contended that PW1 to PW16 have been examined by the prosecution and the legal aid defense counsel cross examined PW1 to PW15 and no CCTV footage was recovered by the Investigation Officer and this was clearly stated by PW9 during cross examination and this petition is filed in order to drag on the proceedings. Thus it would be the prosecution's request that the petition may be dismissed in respect of PW1 to PW3, evenwhile stating that they have no objection for allowing the petition in respect of PW16.

4. Heard both. Perused the materials on record.

5. **The Point for consideration that arises is :-**

(i) Whether the petition deserves to be allowed?

6. **Point No.(i):**

No doubt, it was only on account of the request of the petitioner, Legal Aid counsel was appointed to defend him. Now, the petitioner has come forward to state that there is certain aspects that were not cross examined by the legal aid counsel and that upon the advice of the present counsel whom the petitioner has engaged privately, he has come up with the present petition seeking recall of PW1 to PW3 and PW16 for cross examination. Considering the nature of the charges that the petitioner is facing, this court is inclined to

deal with his request sympathetically. The learned Public Prosecutor would object to the request stating that one of the witness PW9 had stated that the CCTV footage is no more available as the memory gets overwritten in a periodically interval. Considering that nearly 12 months have passed away, the chances of the said footage being available is completely ruled out. However, the present petition has been filed only for recall of PW1 to PW3 and PW16. Therefore, the contention of the learned Public Prosecutor cannot be accepted for rejecting the relief sought for by the petitioner. In order to ensure that the petitioner who is facing grave charges is given a fair opportunity, this court is of the view that the present petition deserves to be allowed.

7. In the result, this petition is allowed. Issue summons to PW1 to PW3 and PW16 upon payment of batta.

Dictated to the Steno-typist, transcribed and typed by her, corrected and pronounced by me in open court this the 27th day of August, 2024.

Sd/-
Principal Sessions Judge,
Kanniyakumari at Nagercoil

Principal Sessions Court,
Nagercoil.
Fair Order in
Crl.M.P.No.2/2024 in
SC No.21/2024
Dt.: 27.08.2024