

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.O.P.No.20537 of 2015
and
M.P.No.1 of 2015

1.Rajendran
2.Sakthivel
3.Murugan
4.Anandan

....Petitioners/Accused

Vs.

The State rep. by
The Inspector of Police,
Kattumannarkoil Police Station,
Cuddalore District.
(Crime No.676 of 2003)

...Respondent/Complainant

Prayer : Criminal Original Petition filed under Section 482 Cr.P.C., praying to call for the records and set aside the order made in Cr1.M.P.No.153 of 2015 in S.C.No.465 of 2006 dated 20.07.2015 passed by the II Additional Sessions Judge at Chidambaram.

For Petitioner : Mr.G.Pugazhenth

For Respondent : Mr.C.Emalias
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed praying to set aside the order dated 20.07.2015 passed by the learned II Additional Sessions Judge, Chidambaram in Cr1.M.P.No.153 of 2015 in S.C.No.465 of 2006.

2. On 18.08.2015, this Court passed the following order :
"This case seems to be having a
chequered history inasmuch as the offence was

committed sometime in the year 2003 and final report was filed in the year 2006 against five accused. It appears that A3 absconded and the case against him was split up and trial proceeded as against A1, A2, A4, and A5. Midway, A3 was apprehended and the orders of this Court in CrI.OP.No10366 of 2008 dated 29.10.2014, a de novo trial was ordered. Therefore, prosecution witnesses were once again summoned by the Trial Court from 16.02.2015.

2. Now, it appears that, the prosecution have examined 23 witnesses of whom the petitioners herein, who are A1, A2, A4 and A5 have cross-examined all the witnesses, except PW4 to PW10. The reason for not cross-examining PW4 to PW10 was on account of boycott of Court by advocates on 13.04.2015. Therefore, the petitioners filed a petition under Section 311 Cr.P.C., in CrI.M.P.No.153 of 2015 for recalling the PW4 to PW10 and the same was dismissed by the Trial Court by a well considered order dated 20.07.2015, challenging which, the petitioners are before this Court.

3. Heard the learned counsel for the petitioners, the learned Additional Public Prosecutor and perused the impugned order.

4. In the opinion of this Court, the Trial Judge was perfectly right in dismissing the 311 petition, by relying upon the judgment of this Court in S.Yuvaraj Vs. State [2013 (4) MLJ (CrI) 314], wherein the Division Bench of this Court has held that, boycott of Courts cannot be a reason for the Trial Court to send back the witnesses. In ordinary circumstances, this Court would have dismissed this petition and confirmed the Trial Court order, but in this case, this Court finds that the petitioners/accused have been diligently appearing before the Trial Court since 2006 and even in the earlier trial, they have cross-examined the witnesses diligently. It

was only A3, who had absconded and now it appears that A3 is not cross-examining the prosecution witnesses, despite opportunity being given to him.

5. Taking into consideration, the conduct of these petitioners, this Court is of the view that it will serve the interest of justice, if PW4 to PW10 are recalled in a time bound manner and the petitioners/accused and A3 be permitted to cross-examine them on the following conditions :

a) The petitioners shall pay a cost of Rs.200/- each to the witnesses, when they come for giving evidence.

b) Even though A3 has not filed any application/petition under Section 311 Cr.P.C., the Court may permit him to cross-examine and if he does not cross-examine, the same shall be recorded in the deposition, so that his conduct can be assessed later.

6. The Trial Court shall fix a date and on such date the said witnesses shall be recalled and cross-examined as aforesaid. Since, this Court is monitoring this case, the Trial Court is directed to complete this process within two weeks from the date of receipt of a copy of this order and send a compliance report to this Court on 08.09.2015."

4. Today, the learned Additional Public Prosecutor and the learned counsel for the petitioners submitted that, the order passed by this Court has been complied with and the witnesses were examined as directed by this Court.

5. Recording the same, this Criminal Original Petition is closed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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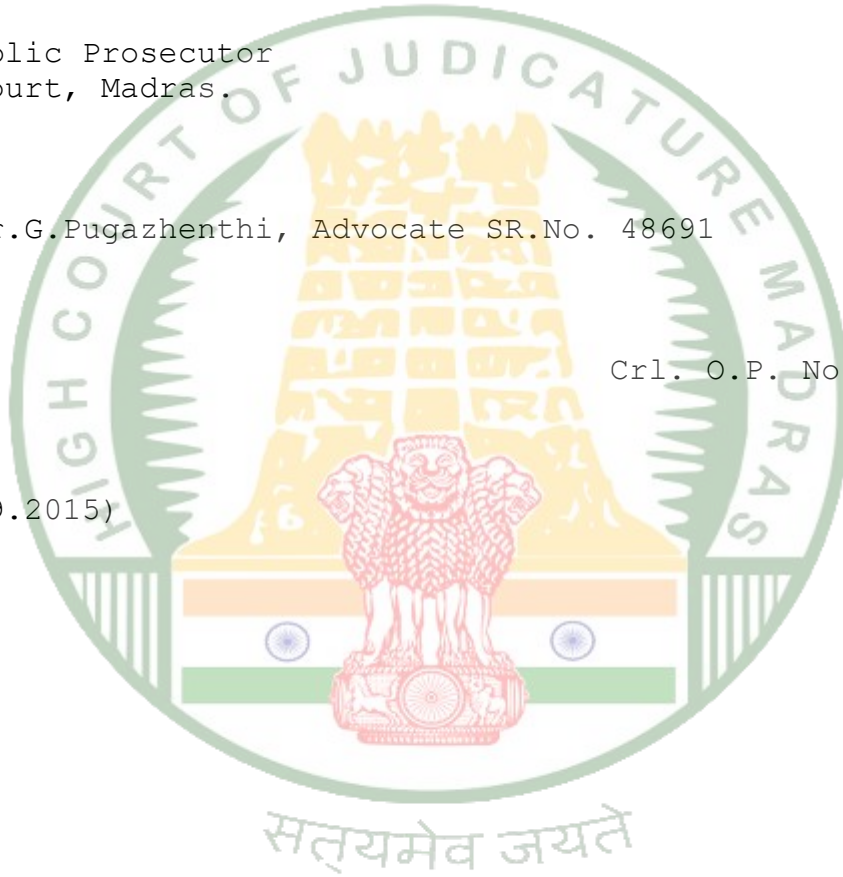
To

1. The II Additional Sessions Judge,
Chidambaram.
2. The Inspector of Police,
Kattumannarkoil Police Station,
Cuddalore District.
3. The Public Prosecutor
High Court, Madras.

1 CC to Mr.G.Pugazhenthii, Advocate SR.No. 48691

Cr1. O.P. No.20537 of 2015

MG (CO)
PSI (29.09.2015)



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