

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2015

CORAM:

THE HON'BLE MR.JUSTICE R.SUBBIAH

Cr1.O.P.No.25415 of 2015  
and  
M.P.Nos.1 & 2 of 2015

1.B.Jaya  
2.R.Bose

... Petitioners/Accused 1 & 2

Vs.

State rep.by  
The Inspector of Police,  
P3 - Yyasarpadi Police Station,  
Vyasarpadi,  
Chennai-600 039. .... Respondent/Complainant

Prayer: Petition filed under Section 482 of the Criminal Procedure Code praying to direct the Magalir Needhimandram, Chennai to dispose of the unnumbered petition filed by the petitioners under Section 232 Cr.P.C, which is pending in S.R.No.13932 of 2015 in S.C.No.40 of 2013 on the file of the Magalir Needhimandram, Chennai in accordance with law.

For Petitioners : Mr.G.Ravikumar

For Respondent : Mr.C.Emalias,  
Additional Public Prosecutor

ORDER

This petition has been filed by the petitioners praying to direct the Magalir Needhimandram, Chennai to dispose of the unnumbered petition filed by the petitioners under Section 232 of Cr.P.C., which is pending in S.R.No.13932 of 2015 in S.C.No.40 of 2013.

2.The petitioners herein have been arrayed as accused 1 & 2 in the criminal case in S.C.No.40 of 2014 pending on the file of the Magalir Needhimandram, Chennai, for the alleged offences under Sections 406, 417, 420 and 306 r/w 34 IPC. The

prosecution has examined 14 witness on their side. After examination of prosecution witnesses, on 07.10.2014, the trial Court questioned the petitioners under Section 313 of Cr.P.C. Thereafter, the case was adjourned from time to time for cross-examination. On 25.03.2015, P.W.2 was cross-examined. The petitioner filed a petition to recall P.W.13 & P.W.14 (Investigating Officers) for cross-examination. The said petition was allowed on the same day by the trial Court. Subsequently, the case stands adjourned to 09.04.2015 for cross-examination of P.W.13 and P.W.14. Thereafter, the case was adjourned to 22.06.2015 for appearance of P.W.13 and P.W.14. On that day the trial Court ordered final notice for appearance of P.W.13 (investigating officer-Sheik Babu) for cross-examination on 06.07.2015. However, on 06.07.2015, the P.W.13 (investigating officer-Sheik Babu) failed to appear before the Trial Court for cross-examination and the Trial Court passed the following order on 06.07.2015:-

"A1 and A2 not present. Petition filed. Final notice sent. But witness P.W.13 not present. Summons not served and produced. Again taken up by 1.20 p.m. Witness P.W.13 not present. P.W.13 recall and chief examination expunged. Recall P.W.14 call on 21.07.2015."

Subsequently, on 21.07.2015 P.W.14 Purushothaman (another investigating officer) was cross-examined by the learned counsel for the petitioner and thereafter, the case was adjourned to 03.08.2015. On 03.08.2015, the case was again adjourned to 14.08.2015 for further proceedings.

3. Since the evidence of P.W.13 was expunged by the trial Court, according to the petitioners, absolutely there is no material available on record before the trial Court against the petitioner to proceed further in this case. Thus, the petitioners filed a petition under Section 232 of Cr.P.C. on 10.08.2015 on the ground that there was no evidence available on record against them and prayed the trial court for acquittal of them from the case. But, the said petition was returned. Aggrieved over the same, the present petition has been filed by the petitioner.

4. When the matter is taken up for consideration, the learned Additional Public Prosecutor filed a status report stating that the prosecution has filed a petition under Section 311 of Cr.P.C. before the trial Court to recall P.W.13 witness and the same is pending, that is why the petition

filed by the petitioners under Section 232 of Cr.P.C., has been returned by the trial Court.

5. Since the recall petition filed by the prosecution is pending, I do not find any infirmity in the order passed by the Court below in returning the petition filed by the petitioner. However, after completion of examination of witnesses, the petitioner is at liberty to file a petition under Section 232 of Cr.P.C. In the event of filing of such petition by the petitioner, the Court below is directed to pass appropriate orders in accordance with law. **"The Trial Court Viz., Magalir Needhimandram, Chennai is directed to consider and pass orders in the petition filed by the prosecution under Section 311 of Cr.P.C. to recall P.W.13, without being influenced by the observations made by this Court".**

With the above terms, this criminal original petition is dismissed.

Sd/-

Assistant Registrar(CS VII)

Dated : 09.12.2015

**\*Corrected as per the Order  
of this Court dated 09.02.2016  
and made in CrI.O.P.No.25415 of 2015.  
Sd/- Assistant Registrar(CS II)**

//True Copy//

Sub Assistant Registrar

ssv

To

1. The Inspector of Police,  
P3 - Yyasarpadi Police Station,  
Vyasarpadi, Chennai-600 039.

To be substituted to the  
Order already despatched

2. The Public Prosecutor,  
High Court, Madras.

on 17.12.2015

CrI.O.P.No.25415 of 2015

SK(CO)  
CA(10/12/2015)  
CA(07.03.2016)