

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Crl.O.P.No.27792 of 2015

1. Veeraiyan
2. Umaiypathi

... Petitioners

Vs

The State, rep. By
the Inspector of Police,
Kariyapattinam Police Station,
Nagapattinam District.

... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. seeking a direction to call for the records relating to the order dated 7.9.2015 made in Crl.M.P.No.1877 of 2015 in S.C.No.74 of 2014 on the file of the District & Sessions Judge, Nagapattinam, set aside the same and permit the petitioners to cross-examine the witness Pws.1 to 6 and PW.9 on any date fixed by this Court.

For Petitioner : Mr.S.Kumara Devan
For Respondents : Mr.C.Emalias
Additional Public Prosecutor

O R D E R

Aggrieved by the order, dated 7.9.2015 passed by the learned District and Sessions Judge, Nagapattinam in Crl.M.P.No. 18777 of 2015 in S.C.No.74 of 2014, the petitioners have come forward with the present petition. By the said order, the relief sought for by the petitioners to recall the witnesses, viz., Pws 1 to 6 and 9 for the purpose of cross-examination, has been rejected.

2. The petitioners are A1 and A2 in S.C.No.74 of 2014 pending on the file of the District and Sessions Court, Nagapattinam, for the alleged offences under Sections 294(B), 324 and 302 IPC. After completion of prosecution witnesses, the petitioners have filed a petition under Section 311 Cr.P.C., seeking to recall the witnesses, viz., PWs 1 to 6 and PW.9 for the purpose of cross-examination. According to the petitioners, they engaged a new counsel to defend them, but they were unable to furnish case bundle to him in time, by which, they did not cross-examine the above said witnesses. The said petition was

opposed by the prosecution, stating that the petition was filed belatedly and the petitioners have not taken any steps to cross-examine the witnesses despite the matter was adjourned on several occasions.

3. The learned Judge, on considering the entire facts and circumstances, rejected the petition of the petitioners, stating that no valid reason has been assigned for the delay in filing the petition and the petitioners have not chosen to cross-examine the witnesses despite the matter was adjourned on four occasions.

4. Heard the learned counsel appearing for the petitioners and perused the entire materials available on record.

5. It is not in dispute that the petitioners were facing trial in respect of the offence under Section 302 IPC and the punishment is life imprisonment and therefore, without going into the merits or demerits of the matter, in the interest of justice, in order to give a fair and final opportunity, I am of the view that the petitioners can be permitted to cross-examine the witnesses, subject to payment of costs of Rs.3500/- each towards the expenses of the witnesses at Rs.1000/- each.

6. Accordingly, the order, dated 7.09.2015 passed by the learned District and Sessions Judge, Nagapattinam in Crl.M.P.No.1877 of 2015 in S.C.No.74 of 2014 is hereby set aside. The learned Judge is directed to recall the witnesses, viz., Pws.1 to 6 and 9 and permit the petitioners to cross-examine them, subject to the condition that they shall deposit a sum of Rs.7000/- (each Rs.3,500/-), payable to the witnesses at Rs.1000/- each. On such payment, the learned Judge is directed to pay Rs.1000/- to each of the witness towards their expenses and fix a particular date for cross-examination of the above said witnesses and complete the same.

With the above direction, this Criminal Original Petition is ordered.

Suk

s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

The Inspector of Police,
Kariyapattinam Police Station,
Nagapattinam District.

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CRL.O.P.NO.27792 OF 2015