



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.06.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

Crl.O.P(MD)No.10963 of 2015

and M.P.(MD) No. 1 of 2015

WEB COPY

1.Prakasam
2.Palanivel
3.Muralidharan
4.Rajendran

... Petitioners

Vs.

The State rep by the Inspector of Police,
Vathalai Police Station, Tiruchirappalli District
(Crime No.233of 2015)

... Respondent

Prayer:Criminal Original Petition filed under Section 482 of Cr.P.C praying to call for the records pertaining to the order dated 8.6.2015 passed in Cr.M.P.No.1280 of 2015 in S.C.No.63 of 2014 on the file of the learned Sessions Judge of Tiruchirappalli Division, Tiruchirappalli and set aside the same and to allow this original petition and pass such other orders as this Court may deem fit and proper in the circumstances of the case.

For Petitioners : Mr.Veera Kathiravan
For Respondent : Mr.K.V.Rajaraj
Government Advocate(Crl.side)
For Intervenor : Mr.Palanivelayutham

O R D E R

This Criminal Original Petition has been filed by the accused challenging the order passed by the learned Sessions Judge, Trichirappalli made in Cr.M.P.No.1280 of 2015 in S.C.NO.63 of 2014.

2. The petitioners, who are arrayed as A1 to A4 in S.C.NO.63 of 2014, are facing charges under Sections 341, 302 IPC r/w Section 34 of IPC. The petitioners filed Cr.M.P.No.1280 of 2015 under Section 311 of Cr.P.C seeking to recall P.W.21 for the purpose of cross-examination. The petitioners have contended that the Investigating Officer, P.W.21 has not mentioned about the presence of eye witnesses, while recording the oral dying declaration, which was wrongly typed as if eye witnesses are present and the contradictions and improvements made by the witnesses over their 161 Cr.P.C statements have to be elicited from the witnesses.

3. The said application was resisted by the prosecution by filing counter stating that the High Court has already issued direction to dispose of the case in the month of June and each and every line of typing is read out by the court and if there is any error, it should be corrected then and there and once evidence is recorded, then it cannot be changed later. The learned Sessions Judge dismissed the application. Aggrieved by the same, this

Criminal Original Petition has been filed.

4. Mr.Veera Kathiravan, learned counsel for the petitioners submitted that the petitioners are facing grave charges and their application has to be considered liberally giving opportunity to the accused to establish their innocence and rejection of the application will cause great prejudice to them. It is further submitted that the application was filed on 02.06.2015, whereas, the direction was given by this Court to complete the trial only on or before 30.06.2015 and there is no delay on the part of the accused in filing the application. The learned counsel for the petitioners undertakes to complete the cross examination on the very same day and they will not file any application in future to re-call other witnesses.

5.Mr.Palani Velayutham, learned counsel appearing for the defacto complainant/LW1/PW1 vehemently opposed the petition stating that the accused have filed this application belatedly without assigning valid reason and their object is to erase the evidence given by the Investigating Officer in this case and if it is altered, it will cause great prejudice to the victim.

6. Heard the learned Government Advocate(Crl.side) appearing for the State.

7. Considering the fact that the petitioners are facing charges under Sections 341, 302 IPC r/w Section 34 of IPC and they have filed the application on 02.06.2015, this Court sets aside the order passed in Cr.M.P.No.1280 of 2015 in S.C.No.63 of 2014 to provide one more opportunity to the accused. The Investigating Officer shall appear before the court of Sessions, Trichirappalli, on 24.06.2015 and the petitioners shall complete cross-examination with regard to the grounds mentioned in the application on the same day. The petitioners shall not file any other application to recall other witnesses and the learned Sessions Judge,Trichirappalli, shall dispose of the case in S.C.NO.63 of 2014 as per the direction of this Court in Cr.O.P. No.15945 of 2014 dated 23.01.2015. It is open to the prosecution to re-examine the Investigating Officer, if necessary. This Criminal Original Petition is ordered accordingly. The Connected MP. Is Closed.

Sd

ASST REGISTRAR (RTI)

TRUE COPY

SUB ASST REGISTRAR

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TO

- 1.The Inspector of Police,Vathalai Police Station,Tiruchi Dt
- 2.The Sessions Judge,Trichirappalli
- 3.The Additional Public Prosecutor,

Madurai Bench of Madras High Court, Madurai.

1CC TO MR. S. PALANIVELAYUTHAM, ADV. SR:32577

<https://hccases.hccourt.gov.in/HCCases/1CC/1CC%20TO%20MR.%20S.%20PALANIVELAYUTHAM,%20ADV.%20SR%3A32577>

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