

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.OP.No.17117 of 2016

and

Cr1.MP No.8217 of 2016

1.Ramachandran
2.Malarkodi
3.Govindarajulu

... Petitioners

Vs

State rep.by
The Sub Inspector of Police,
District Crime Branch,
Cuddalore,
Cuddalore District.

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records and to set aside the order made in CMP No.3931 of 2015 in CC No.78 of 2012 dated 08.03.2016 passed by the learned District Munsif cum Judicial Magistrate, Parangipettai.

For Petitioners : Mr.G.Pugazhenth

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

ORDER

This Criminal Original Petition has been filed to set aside the order made in CMP.No.3931 of 2015 in CC.No.78 of 2012 dated 08.03.2016 passed by the learned District Munsif cum Judicial Magistrate, Parangipettai.

2. Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the respondent.

3. The petitioners are facing trial in C.C.No.78 of 2012 before the District Munsif cum Judicial Magistrate, Parangipettai, for the offences under Sections 465, 468, 471 & 420 r/w 120-B IPC. Trial commenced in this case and prosecution examined the witnesses. In the course of trial,

the petitioner filed Crl.MP.No.3931 of 2015 in C.C.No.78 of 2012 under Section 311 Cr.P.C. for recalling PW1, PW2, PW9, PW16, PW17, PW18, PW19 and also other witnesses, whom they had not cross-examined. The trial Judge heard the petitioners and the Public Prosecutor and by a well considered order, dismissed the petition on 08.03.2016, challenging which, the petitioners are before this Court.

4. The learned counsel for the petitioners submitted that PW1 was not cross-examined by the petitioners/accused because they had filed a defer petition before the trial Court to defer the cross-examination of PW1 until her husband PW19 is examined. As regards the other witnesses, the learned counsel for the petitioners submitted that they are very important for the just decision of the case.

5. On a perusal of the petition in Crl.M.P.No.3931 of 2015 filed by the petitioners, they have not given any acceptable reasons for a wholesale recalling of the aforesaid witnesses. This case is of the year 2012 and by adopting dilatory tactics, the petitioners have prolonged the case till date. That apart, PW19 has turned hostile to the prosecution case and therefore there is no necessity to recall PW19.

6. However, this Court finds that the petitioners have not cross-examined PW1. It is seen that PW1 was examined-in-chief on 14.03.2013 and now, in the year 2016, if PW1 is recalled for cross-examination, she may not even remember what evidence she gave in the year 2013. That apart, there will be an attempt by the accused to turn her hostile.

7. Bearing all these in mind, this Court is of the view that it will serve the interest of justice if PW1 is recalled for the purpose of cross-examination by the petitioners on payment of costs. The prayer for recalling other witnesses stands rejected.

8. In the result,

(a) The trial Court is directed to recall PW1 on a day convenient to the trial Court within two weeks from the date of receipt of a copy of this order.

(b) On PW1 appearing for cross-examination, the learned Additional Public Prosecutor should refresh the memory of PW1 by giving her the evidence, she had given in chief in the year 2013 and only thereafter, she must be subjected to cross-examination.

(c) The petitioners/accused shall pay a sum of Rs.1,000/- as costs to PW1. If PW1 turns hostile in the cross-examination, it is open to the trial

Court to place reliance on the chief examination of PW1, in the light of the amendment of Section 154 of the Indian Evidence Act and the Judgment of Supreme Court reported in Vinod Kumar Vs. State of Punjab [2015 (1 Scale) 542].

(d) On the appearance of PW1, if she is not cross-examined by the petitioners for any reason, including boycott of Courts, the petitioners will forfeit their right to cross-examine her.

8. With the above directions, this Criminal Original Petition is allowed-in-part. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

ds

To

1. The District Munsif cum Judicial Magistrate, Parangipettai.
2. The Sub Inspector of Police, District Crime Branch, Cuddalore, Cuddalore District.
3. The Public Prosecutor, High Court, Chennai.

+1cc to Mr.G.Pugazhenth, Advocate, S.R.No.47338

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AD(CO)
CA(12/09/2016)