

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2016

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.OP No.8477 of 2016 & Crl.M.P. No.4417 of 2016

1. K. Kannapiran

2. K. Udhayaraj

3. K. Vasughi Petitioners

Vs

State represented by

Inspector of Police

Chidambaram Town Police Station

Chidambaram

.... Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the order dated 29.03.2016 in C.M.P. No.1684/2016 in CC No.50/2013 on the file of the Judicial Magistrate, No-II, Chidambaram.

For petitioners

Mr. P.Tamilavel

For respondent

Ms. C. Emalias

Addl. Public Prosecutor

ORDER

This Criminal Original Petition has been filed to set aside the order dated 29.03.2016 passed in C.M.P. No.1684/2016 in CC No.50/2013 on the file of the Judicial Magistrate Court, No-II, Chidambaram.

2 On 07.06.20016, this Court passed the following order:

"2 It is seen that the petitioners are facing trial in C.C. No.50 of 2013 for offences under Section 294(b), 324 and 506(ii) IPC, before the Judicial Magistrate No.II, Chidambaram. While so, the prosecution examined 9 witnesses and the petitioners did not cross examine the witnesses and they adopted dilatory

tactics. Thereafter, the petitioners filed Cr.M.P. No.1684 of 2016 for recalling P.Ws. 1 to 6, 8 and 9 for cross examination, which was dismissed by the Trial Court on 29.03.2016 by passing a well considered order.

3 The Trial Court has relied upon the judgment of the Supreme Court in **Vinoth Kumar vs. State of Punjab, (2015) 1 MLJ (Crl.) 288** and also the Circular dated 18.12.2015 issued by this Court and dismissed the recall application.

4 This Court does not find any serious infirmity in the order passed by the Trial Court, inasmuch as the Trial Court has only followed the Circular issued by this Court. However, this Court is of the considered view that it will be in the interest of justice, if some of the witnesses are recalled, if they are alive and available, for the purpose of cross examination by the accused.

5 Accordingly, this Criminal Original Petition is partly allowed. Connected CrI.M.P. is closed. The Trial Court shall fix a date and recall P.W.2, Chandra, P.W.3, Balasubramanian, P.W.6, Dr. Suganthi and P.W.8, Marimuthu, on payment of Rs.1,000/- as costs by the petitioners to each of the witnesses before they get into the witness box. On the date of appearance of the witnesses, the petitioners/accused shall cross examine the witnesses and it is made clear that if, for any reason, be it boycott or otherwise, they fail to cross examine the witnesses, they will forfeit their right to cross examine the witnesses. It is also made clear that if they adopt dilatory tactics, it is open to the Court to remand the accused to custody under Section 309, Cr.P.C. as laid down by the Supreme Court in **State of Uttar Pradesh vs. Shambhu Nath Singh, JT 2001 (4) SC 319**. The entire exercise shall be completed before 25.07.2016.

Post the matter on 28.07.2016 at 2.15 p.m. for reporting compliance."

3 The learned Additional Public Prosecutor submitted that all the 4 witnesses, viz., Chandra (P.W.2), Balasubramanian (P.W.3), Dr. Suganthi (P.W.6) and Marimuthu (P.W.8) were summoned and they came to the court for giving evidence on 08.08.2016 and on that day, the petitioners did not cross-examine the said witnesses due to boycott of courts.

4 In the order dated 07.06.2016 extracted above, this Court has clearly held that boycott of Courts cannot be a reason for non cross-examination of witnesses. Under such circumstances, the petitioners have lost their right to recall the witnesses.

In the result, this Criminal Original Petition is dismissed. Connected Crl.M.P. is closed.

19.08.2016

cad/vsi2

P.N. PRAKASH, J.

cad/vsi2

To

- 1 The Inspector of Police
 Chidambaram Town Police Station
 Chidambaram
- 2 The Judicial Magistrate No-II
 Chidambaram
- 2 The Public Prosecutor
 High Court of Madras
 Chennai 600 104

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