

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. No.9452 of 2016

and

Crl.M.P. No.4891 of 2016

1.Vignesh @ Saravanakumar

2.Pazhani @ Pazhanisamy

3.Vaithianathaswami Petitioners/Accused 1 to 3

Vs

State represented by

The Station House Officer

Chidambaram Taluk Police Station

Crime No.103/2013

... Respondent/Complainant

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to set aside the order made in C.M.P. No.745/2016 in C.C. No.179/2013 dated 15.02.2016 by the Judicial Magistrate No.II, Chidambaram.

For petitioners : Mr. K.V. Sridharan

For respondent : Mr.C.Emalias
Additional Public Prosecutor

ORDER

This Criminal Original Petition is filed seeking to set aside the order dated 15.02.2016 passed in C.M.P. No.745/2016 in C.C. No.179/2013 by the Judicial Magistrate No.II, Chidambaram.

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

3. It is seen that the petitioners herein are facing trial in C.C. No.179/2013 before the Judicial Magistrate, II, Chidambaram for offences under Section 341, 294(b), 324, 326, and 506(2), IPC. The prosecution examined nine witnesses.

P.W.9 was examined in chief on 26.02.2015 and the petitioners did not cross examine P.W.9. Thereafter, the petitioners filed an application under Section 311, CrI.P.C., which was allowed by the Trial Court and P.W.9 was directed to appear before the Trial Court. P.W.9 appeared before the Trial Court on 11.01.2016 and he was waiting from morning to evening, but, was not cross examined. Therefore, the evidence of P.W.9 was closed. Again, the petitioners filed a second application in C.M.P. No.745 of 2016 under Section 311, Cr.P.C. for recalling P.W.9, which came to be dismissed by the Trial Court on 15.02.2016, challenging which the petitioners are before this Court.

4. The Supreme Court, in Vinoth Kumar vs. State of Punjab, 2015 (1) MLJ (CrI.) 288, has clearly issued a direction that a witness who is examined in chief should be cross examined on the same day. The Supreme Court has also directed all the High Courts to issue circular to the Trial Courts to follow the dictum laid down therein. In compliance of the direction of the Supreme Court, the High Court has issued a circular dated 18.12.2015 to all the Trial Courts in the State of Tamil Nadu.

5. The Judicial Magistrate No.II, Chidambaram, has relied upon the circular issued by this Court and the law laid down by the Supreme Court in Vinoth Kumar case (supra) and has dismissed the second petition filed by the petitioners under Section 311, Cr.P.C., narrating the fact that P.W.9 was recalled earlier and he appeared before the Trial Court and waited for the whole day, despite which, he was not cross examined by the defence.

6. Proviso to Section 309, Cr.P.C. reads as under:
"Provided also that--

a. no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;

b. the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment;

c. where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be."

7. In the light of the aforestated legal position and also the law laid down by the Supreme Court, this Court is of the considered view that the order passed by the Court below does not suffer from any serious infirmity.

In the result, this petition is dismissed as being devoid of merits. Connected Crl.M.P. is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

cad

To

1. The Station House Officer
Chidambaram Taluk Police Station
Crime No.103/2013
2. The Public Prosecutor
High Court of Madras
Chennai 600 104.

+1cc to Mr.K.V. Sridharan, Advocate, S.R.No.31167

Crl.O.P. No.9452 of 2016

JSV(CO)
CA(17/06/2016)

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