



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.08.2016

CORAM

WEB COPY

THE HONOURABLE DR.JUSTICE S.VIMALA
Crl.O.P. (MD) .No.13539 of 2016

1.Mookandi @ Peria Esakki @ Esakkimuthu
2.Chinna Esakki
3.Velu Thevar @ Velpandi ... Petitioners/Petitioners/Accused
-Vs-

State rep. by
The Inspector of Police,
Gangaikondan Police Station
Tirunelveli District ...Respondent/Respondent/ Complainant

Petition filed under Section 482 of the Code of Criminal Procedure to set aside the order made in Crl.MP.No.23 of 2016 in S.C.No.267 of 2012 by the Principal Assistant Sessions Judge Tirunelveli dated 12.03.2016.

For Petitioner : M/s.D.Venkatesh
For Respondents : Mr.A.P.Balasubramani
Govt. Advocate (Crl.Side)

O R D E R

This petition has been filed seeking to set aside the order made in Crl.MP.No.23 of 2016 in S.C.No.267 of 2012 by the Principal Assistant Sessions Judge Tirunelveli dated 12.03.2016.

2.Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. Side) for the respondents.

3.An application to recall P.Ws.1 and 2 filed before the Principal Assistant Sessions Court, Tirunelveli in Cr.M.P.No.23/2016 has been dismissed on 12.03.2016 and challenging the same, this petition is filed.

4. It is seen that a case has been registered against the petitioners herein under Sections 294(b), 307, 326 and 506(ii) r/w 34 IPC. P.Ws.1 & 2 had been examined on 04.04.2013 itself. At the stage when Investigating Officer had to be examined, the petition to recall P.Ws.1 and 2 had been filed. However, the Court below has expressed an apprehension that this period would have been utilized to tamper with the witnesses. The apprehension of the lower Court cannot be considered as unreasonable, but factually it has to be ascertained whether really P.Ws.1 and 2 have been

5. The learned counsel for the petitioners would submit that a new counsel was engaged by the accused persons / petitioners and that is the reason why the witnesses could not be cross examined on the earlier occasion.

6. Under such circumstances, having regard to the grave nature of the charges against the petitioners, i.e. charges under Sections 307 and 326 IPC, if the witnesses are left uncross-examined that would take away the liberty of the petitioners. Cross examination would be helpful to bring out the truth before the Court. The apprehension that P.Ws.1 & 2 could have been tampered with can be ascertained during cross examination and the prosecution is at liberty to treat the witnesses as hostile and to further cross examine those witnesses.

7. In such view of the matter, the petition to recall P.Ws.1 & 2 deserves to be allowed, however, the long delay in taking steps to file the petition to recall P.Ws.1 and 2 has to be compensated.

8. In the result, this petition is allowed subject to the condition that each of petitioner/accused shall pay a sum of Rs.2,000/- (Rupees two thousand only) to the District Legal Services Authority, attached to the Sessions Court, Tirunelveli. On paying the said sum, the learned Principal Assistant Sessions Judge, Tirunelveli shall allow the petitioners to recall P.Ws.1 and 2. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AS)

/True copy/

Sub Assistant Registrar

To:

- 1.The Principal Assistant Sessions Judge,
Tirunelveli.
- 2.The Inspector of Police,
Gangaikondan Police Station
Tirunelveli District.
- 3.The District Legal Services Authority and Sessions Court,
Tirunelveli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/s.D.Venkatesh, Advocate SR.No. 41397

RR/ar

JA-SKS-RR-24.08.2016/2P:6C

Cr1.O.P. (MD) .No.13539 of 2016
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