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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

Crl.O.P.(MD)No.21375 of 2016

and

Crl.M.P(MD).No.10957 of 2016

1.Sadiq Ali @ Jaffer Ali
2.Parveenbanu
3.Shofia
4.Salman Paris
5.Nettavana N.S.Liyakat Ali
6.Mohammed Refeek
7.Syed Ibrahim
8.Mohammed Sherif
9.Riyaz Shal Haq
10.Sakkarai Sahul Hameed
11.Aris Ali

.. Petitioners

Vs.

State Rep. by
The Inspector of Police,
Aravakurichi Police Station,
Karur District.
Crime No.92 of 2015

..Respondent

Prayer: Petition is filed under Section 482 of Cr.P.C., to set aside the order dated 13.10.2016 in Criminal Revision No.34 of 2016, on the file of the learned Sessions Judge, Karur, confirming the order, dated 23.09.2016, in Crl.M.P.No.6472 of 2016, in C.C.No.159 of 2015, on the file of the learned Judicial Magistrate No.2, Karur and allow this Criminal Original Petition.

For petitioners : Mr.S.Gokul Raj

For respondent : Mr.P.Kannithevan
Government Advocate(Criminal Side)

ORDER

This petition is filed to set aside the order dated 13.10.2016 in Criminal Revision No.34 of 2016 on the file of the learned Sessions Judge, Karur, confirming the order dated 23.09.2016 in Crl.M.P.No.6472 of 2016 in C.C.No.159 of 2015 on the file of the learned Judicial Magistrate No.2, Karur.



2.The petitioners, who are arrayed as accused in C.C.No.159 of 2015, on the file of the learned Judicial Magistrate No.II, Karur, filed Crl.M.P.No.6472 of 2016, to recall PWs. 1 to 3 for the purpose of cross-examination. The petition was dismissed. Against the order, the present petition has been filed.

3. Mr.S.Gokul Raj, learned counsel for the petitioner would submit that based on the complaint given by the tenant of the petitioners, a criminal case was registered against the petitioners in C.C.No.159 of 2015 and the case was posted for trial on 17.08.2016. The prosecution examined PWs.1 to 3 and due to the reason that the advocates from Karur Bar attended for a reference, the witnesses could not be cross-examined and on the very next hearing date, i.e., on 12.09.2016, an application was filed for seeking permission to cross-examine the Pws.1 to 3. However, the learned Judicial Magistrate dismissed the application observing that in Crl.O.P.(MD).No.6695 of 2016, a direction was issued to complete the trial within a period of three months.

4. It is further submitted that after 17.08.2016, the prosecution has examined remaining witnesses and they were duly cross-examined by the accused and the application cannot be dismissed without giving opportunity on the ground that the case has to be disposed in a time frame.

5. The learned counsel for the petitioner would further submit that only due to genuine reason, the witnesses could not be cross-examined on 17.08.2016 and in the interest of justice, they should be given an opportunity to cross-examine the witnesses for a fair trial. It is further submitted that the petitioners are willing to donate Rs.15,000/- to the Government Girls' Higher Secondary School, Ulaganeri, Madurai.

6.Heard the learned counsel for the petitioners and the learned Government Advocate (Crl. Side) for the respondent and perused the records.

7.Considering the facts and circumstances of the case, this Court permitted the petitioners to pay Rs.15,000/- to the Government Girls' Higher Secondary School, Ulaganeri, Madurai. Further, it is an admitted fact that PWs.1 to 3 were examined in chief only on 17.08.2016 and on the very next hearing, this petition came to be filed to recall PWs.1 to 3 for the purpose of cross-examination. It is not the case of the prosecution that the accused deliberately deferred cross examination of witnesses to win over them and after lapse of considerable period, filed this petition. So, this Court opines that the accused are entitled for an opportunity to cross examine the witnesses. Therefore, in the interest of justice, the order passed by the learned Judicial Magistrate No.II, Karur, in Crl.M.P.No.6472 of 2016 in C.C.No.159



of 2015, is set aside. The petitioners shall cross-examine the witnesses PWs.1 and 3, on the same day of their appearance.

8. Accordingly, this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar(T & P)

/TRUE COPY/

Sub Assistant Registrar

To

- 1.The Judicial Magistrate No.II, Karur.
- 2.The Inspector of Police, Aravakurichi Police Station,
Karur District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/s.S.Gokulraj, Advocate, in SR No.69211.

Cr1.O.P.(MD)No.21375 of 2016
15.11.2016

pjl

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