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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.04.2016

CORAM

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl.O.P.(MD)Nos.6222 and 6223 of 2016

and

Crl.M.P.(MD).Nos.3103, 3104, 3105 and 3106 of 2016

1. Sudhakar
2. Manoharan
3. Prabhakaran
4. Muthugangatharan

... Petitioners in Crl.O.P.No.6222/2016
(A1 to A4)

1. Shanmugavel
2. Sudhakar
3. Manoharan
4. Prabhakaran
5. Muthugangatharan

... Petitioners in Crl.O.P.No.6223/2016

Vs.

1. The Inspector of Police,
Eraniel Police Station,
in Crime No.938/2008,
Kanyakumari District.

2. Sivasankarapandian

... Respondents in Crl.O.P.No.6222/2016

1. The Inspector of Police,
Eraniel Police Station,
in Crime No.905/2008,
Kanyakumari District.

2. Chelladurai

... Respondents in Crl.O.P.No.6223/2016

Prayer: Criminal Original Petitions are filed under Section 482 of Cr.P.C., to call for the records relating to the charge sheet in C.C.Nos.208 and 252 of 2009 on the file of the District Munsif cum Judicial Magistrate Court, Eraniel and quash the same.

For Petitioners : Mr.M.Subash Babu

For R1 : Mrs.S.Prabha
Government Advocate (Crl.Side)

C O M M O N O R D E R

These Criminal Original Petitions have been filed to call for the records relating to the charge sheet in C.C.Nos.208 and 252 of 2009 on the file of the District Munsif cum Judicial Magistrate Court, Eraniel and quash the same.



2. As this Court is about to dismiss these criminal original petitions, the learned counsel appearing for the petitioners seeks permission of this Court to withdraw the same and he has also made an endorsement to that effect.

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3. In view of the above, these criminal original petitions are dismissed as withdrawn with liberty to raise all the points before the trial Court. Consequently, the connected Miscellaneous Petitions are closed.

4. At this juncture, the learned counsel appearing for the petitioners has submitted that the presence of the petitioners before the trial Court may be dispensed with.

5. Accepting the submission, this Court directs the petitioners 2 and 4 in Crl.O.P.No.6222/2016 and the petitioners 1,3 and 5 in Crl.O.P.No.6223/2016 to appear before the trial Court for collecting the final report and other papers under Section 207 Cr.P.C., at the time of framing charges, for questioning under Section 313 Cr.P.C. and on the day of judgment. On all other dates, if the petitioners file an application under Section 317 Cr.P.C., undertaking that they will not dispute their identity and that their counsel will cross-examine the prosecution witnesses in their absence without adopting dilatory tactics, the trial Court may liberally consider and entertain the same. If the petitioners adopt any dilatory tactics, it is open to the trial Court to insist upon their presence. Consequently, the connected Miscellaneous Petitions are closed.

6. Since the case is of the year 2009, this Court directs the learned District Munsif cum Judicial Magistrate Court, Eraniel to complete the trial expeditiously, provided the petitioners/accused co-operate in the trial by engaging a counsel and cross-examine the prosecution witnesses as and when they are examined in chief as held by the Honourable Supreme Court in **Vinod Kumar vs. State of Punjab** reported in **2015(1) MLJ 288(SC)**. If the petitioners adopts any dilatory tactics, it is open to the trial Court to remand them to custody as per Section 309 Cr.P.C. and also as per the decision laid down by the Honourable Supreme Court in **State of U.P. vs. Sambhunath Singh** reported in **2001(4) SCC 667**.

Sd/
Assistant Registrar(CS-I)

/TRUE COPY/

Sub Assistant Registrar(C.S)
Madurai Bench of Madras High Court,
Madurai.



To

1. The District Munsif cum Judicial Magistrate,
Eraniel, Kanyakumari District.

2. The Inspector of Police,
Eraniel Police Station,
Kanyakumari District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+2ccs to M/S.Subash Babu, Advocate in SR.Nos.20947 & 20948

CrI.O.P. (MD) Nos.6222 and 6223 of 2016
13.04.2016

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