



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.06.2016

CORAM

THE HONOURABLE DR.JUSTICE S.VIMALA

Crl.O.P(MD)No.9776 of 2016

1.Silambarasan

2.Rasu @ Sivakumar

3.Rajan

4.Ramesh

.. Petitioners

.Vs.

State rep. by
The Inspector of Police
Saminathapuram Police Station
Dindigul District

.. Respondent

PRAYER:Criminal Original Petition has been filed under Section 482 of Cr.P.C., praying to set aside the order made in Crl.M.P.No.451 of 2016 in C.C.No.229 of 2014 by the Judicial Magistrate, Palani dated 24.03.2016.

For Petitioner :Mr.D.Venkatesh

For Respondent :Mr.K.V.Rajarajan

Govt. Advocate(Crl. Side)

ORDER

The application filed to recall the witnesses for cross examination has been dismissed by the learned Judicial Magistrate, Palani. Challenging the same, this petition has been filed before this Court.

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

3. From the perusal of the order passed by the learned Magistrate in C.C.No.229 of 2014, it appears that P.Ws.1 to 3 were examined on 05.03.2015 and they were not cross examined and P.Ws.4 to 6 have been examined on 07.05.2015 and they have not been cross examined. The implication of filing the application for recalling the witnesses for cross examination has been very beautifully highlighted by the learned Judicial Magistrate and accordingly, the application filed under Section 311 Cr.P.C. has been dismissed.



4. The apprehension of the trial Court is that the duration that has been taken to file the application for recall might have been utilised to tamper the witnesses and therefore, the application to recall cannot be allowed at this distant point of time. It is true that there is a long delay in filing the application to recall the witnesses. It is equally true that this time might have been utilised by the accused persons to tamper with the witnesses.

5. But, there is no complaint or there is no positive materials to show that the accused made an attempt to tamper with the witnesses.

6. The object of conducting the trial is to ascertain the truth and unless the witness is put to cross examination, the truth is not likely to come out. Fair trial requires that opportunity must be given to the accused to cross examine the witnesses, but, of course, by imposing stringent conditions to ensure that the time of the Court and time of the accused are not wasted any more. There is also an undertaking by the learned counsel for the petitioners that the petitioners shall cross examine all the witnesses on the same day and also pay some costs to each of the witnesses and the accused shall not seek any adjournment during future hearing dates. These undertakings are recorded.

7. Subject to the above undertaking given by the learned counsel for the petitioners, this petition is allowed and the order passed by the Judicial Magistrate in C.C.No.229 of 2014 dated 24.03.2016 is set aside, though for different reasons (in view of the undertaking given) and the application to recall the witnesses is allowed. On the date of cross examination, the petitioners herein shall pay a cost of Rs.250/- to each of the witnesses present for cross examination. Consequently connected Miscellaneous Petition in CrI.M.P.No.4919 of 2016 is closed.

Sd/-

Assistant Registrar(Crl.side)

/True copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate,Palani



2.The Inspector of Police,
Saminathapuram Police Station
Dindigul District

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

+1cc to Mr.D.Venkatesh, Advocate SR.No.32625

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Cr1.O.P(MD)No.9776 of 2016