

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2017

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

Crl.O.P.No.8235 of 2017

and

Crl.MP.No.5907 of 2017

1.Jayakumar

2.Pradeep

3.Sundaram @ Kalyanasundaram Petitioner/Accused 1,3,4

Vs

State rep. by
the Inspector of Police
Avinashi Police Station,
i/c. All Women Police Station,
Avinashi, Tiruppur.

(Crime No.8/2013)

.... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records relating to the order dated 05.04.2017 passed in CC No.180 of 2013 on the file of the Judicial Magistrate Court, Avinashi and set aside the same insofar as it relates to closing of cross examination of P.W.16, Suo motu by the learned Magistrate.

For Petitioners: Mr.K.Govi Ganesan

For Respondent : Mr.C.Emalias, APP

ORDER

This Criminal Original Petition has been filed to set aside the order dated 05.04.2017 passed by the learned Judicial Magistrate, Avinashi in CC No.180 of 2013 with respect to closure of cross examination of P.W.16.

2. The case of the petitioners is that on the basis of the complaint lodged by one Vijaya, a FIR in Crime No.8 of 2013 came to be registered against them for the offences punishable under Sections 365, 354, 506(i) IPC and Section 4 of the Tamil Nadu Woman Harassment Act. After investigation, charge sheet was filed before the learned Judicial Magistrate, Avinashi and the same was taken on file as CC No.180 of 2013. Subsequently,

summons were issued to the petitioners, who, on receipt of the same, entered appearance. Thereafter, trial has commenced, during the course of which, 16 witnesses were examined by the prosecution and the same were cross examined by the petitioners, however, PW16 Investigating Officer was not cross examined by them. Hence, the petitioners filed Section 311 Cr.P.C petition, which was allowed by the learned Magistrate. On 06.03.2017, 15.03.2017 and 22.03.2017, the petitioners were permitted to cross examine P.W.16, but the said witness did not appear. The case was again listed on 05.04.2017, on which date, P.W.16 was present, however, the petitioners sought for passed over, as their counsel was held up in some other Court. But the learned Judicial Magistrate rejected their request and suo motu closed the cross examination of PW.16 and adjourned the case for defence side witnesses. Aggrieved over the same, the petitioners are before this Court with the present petition for the above stated relief.

3. Learned counsel for the petitioners submitted that without providing an opportunity to the petitioners to cross examine PW16, the trial court has suo motu closed the prosecution side evidence, by order dated 05.04.2017, which is per se illegal and is liable to be set aside.

4. On the other hand, learned Additional Public Prosecutor appearing for the respondent submitted that the learned Magistrate has afforded reasonable opportunity to the petitioners to cross examine P.W.16, however, they failed to utilise the same.

5. Heard both sides and perused the records.

6. Admittedly, in CC No.180 of 2013, on the side of the prosecution, as many as 15 witnesses were examined and the same were also cross examined by the petitioners. However, P.W.16, who is the Investigating Officer, was not cross examined by them. Hence, Section 311 Cr.P.C petition was filed and the same was allowed by the learned Magistrate. The petitioners were granted permission to cross examine P.W.16 on 06.03.2017, 15.03.2017 and 22.03.2017, on which dates, P.W.16 was absent. When the matter was again posted for cross examination of P.W.16 on 05.04.2017 and P.W.16 was also present, the petitioners sought for passed over, as their counsel was engaged in some other Court, whereas, the learned Magistrate rejected the request of the petitioners and consequently closed the cross examination of P.W.16 and adjourned the case for defence side witnesses. Hence, the petitioners seek indulgence of this Court by filing the present petition to grant one more opportunity to cross examine P.W.16. This Court is of the view that without any rhyme or reason, when pass over was sought for, the learned

Magistrate has closed the cross examination of P.W.16, which cannot be countenanced. Therefore, this Court, in order to provide an opportunity to the petitioners, is inclined to set aside the order impugned herein.

7. Accordingly, this Criminal Original Petition is allowed and the order dated 05.04.2017 passed by the learned Judicial Magistrate, Avinashi, in C.C.No.180/2013, with regard to closure of cross examination of P.W.16, is set aside. The petitioners are permitted to cross examine P.W.16 on ***28.06.2017** and complete the same on that day itself. The parties are to ensure the presence of P.W.16 on that day. It is made clear that no further adjournment be granted to the petitioners and no further Section 311 Cr.P.C petition be entertained by the trial court. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)
Dated: 19.05.2017

***Corrected as per order of
this court dated 20.06.2017
made in CrI.O.P.No.8235 of 2017
sd/- Assistant Registrar(CS VII)
Dated:20.06.2017**

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate,
Avinashi, Tiruppur.

2.The Inspector of Police
Avinashi Police Station,
i/c. All Women Police Station,
Avinashi, Tiruppur.

3.The Public Prosecutor,
High Court, Madras - 104.

+lcc to M/S.K.Govi Ganesan, Advocate Sr.25146

To be substituted to
the order already
despatched on 07.06.2017

CrI.O.P.No.8235 of 2017

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srg 19/05/2017
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