

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2017

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Crl.O.P.No.8245 of 2017

and

Crl.M.P.No.5923 of 2017

1.Sundaram

S/o.Periyathemma Naicker

2.Sundaram,

S/o.Kanadi Ranga Naicker

.. Petitioners

Vs

State rep. by

Sub Inspector of Police,
Sathyamangalam Police Station,
Erode District.

.. Respondent

Petition filed under Section 482 of the Criminal Procedure Code, to set aside the order dated 14.03.2017 passed in CMP.No.1492/2016 in C.C.No.23/2012 by the learned Judicial Magistrate, Sathyamangalam.

For Petitioners : Mr.S.Parthasarathy

For Respondent : Mr.C.Emalias,

Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to set aside the order dated 14.03.2017 passed by the learned Judicial Magistrate, Sathyamangalam in C.M.P.No.1492 of 2016 in C.C.No.23 of 2012.

2. The case of the petitioners is that they are facing trial for the offences punishable under Sections 324 and 326 IPC in C.C.No.23 of 2012 on the file of the learned Judicial Magistrate, Sathyamangalam. While so, they filed a petition in C.M.P. No.1492 of 2016 under Section 311 Cr.P.C to recall P.W.1 to P.W.8 for the purpose of cross examination. However, the learned Magistrate dismissed the said petition, by order dated 14.03.2017, against which, the present petition came to be filed by the petitioners.

3. Learned counsel for the petitioners submitted that since the petitioners' counsel has attended the case proceedings in some other Courts on the particular date of hearings, the cross examination of P.W.1 to P.W.8 could not be done by the petitioners, which is neither wilful nor wanton. However, the learned Magistrate, without providing an opportunity to the petitioners to cross examine those witnesses, has dismissed the petition filed by the petitioner under Section 311 Cr.P.C. Therefore, learned counsel prayed for one more opportunity to the petitioners, to recall those witnesses and cross examine them.

4. Heard the learned Additional Public Prosecutor appearing for the respondent, who opposed the relief sought for herein, by stating that the petitioners failed to avail the opportunities provided to them.

5. On a perusal of the records, it is seen that P.W.1 to P.W.4, P.W.5 to P.W.7 and P.W.8 were examined on 06.10.2015, 29.12.2015 and 26.02.2016 respectively, on the side of the prosecution, however, they were not cross examined by the petitioners, due to absence of their counsel. According to the petitioners, on the said dates, their counsel was engaged in some other Courts. Though this Court is not inclined to accept the reason stated by the petitioners for non-examining those witnesses, in order to provide an opportunity to the petitioners, is inclined to set aside the order impugned herein, however, subject to payment of costs.

6. Accordingly, the order dated 14.03.2017 passed in CMP.No.1492 of 2016 in CC No.23 of 2012 by the learned Judicial Magistrate, Sathyamangalam is set aside, on condition to pay a sum of Rs.5,000/- as costs to the Legal Services Authority, Erode. On such payment and upon production of receipt for the same, the petitioners are permitted to recall P.W.1 to P.W.4 and P.W.7 and P.W.8 alone, on 18.05.2017 and 19.05.2017 for the purpose of cross examination. The expenses to be incurred by those witnesses for their appearance before the trial court for the purpose of cross examination, shall be borne out by the petitioners. It is made clear that no further adjournment be granted to the petitioners and no further petition under Section 311 Cr.P.C be entertained by the trial Court.

7. The Criminal Original Petition is disposed of, as indicated above. Consequently, the connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Judicial Magistrate, Sathyamangalam.
 2. Do Thro The chief Judicial Magistrate, Erode
 3. The Sub Inspector of Police, Sathyamangalam Police Station,
Erode District.
 4. The Legal Services Authority
Erode
 5. The Public Prosecutor, High Court, Madras -104.
- +1 CC to Mr.S. Parthasarathy, Advocate sr 24921

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