IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2017

CORAM:

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.O.P.No.4686 of 2017
And
Crl.M.P.No.3529 of 2017

1.Rukmangathan
2.Senthil @ Senthil Nathan
3.Appu @ Anbalagan
4.Prem @ Preamkumar
5.Jeeva
6.Prabhu
7.Durai
8.Ashok @ Ashok Kumar ... Petitioners/Petitioners/ Accused

Vs.

State by
The Inspector of Police,
H-5, New Washermenpet Police Station,
Chennai 600 081. ... Respondent/Respondent/ Complainant

PRAYER:
Criminal Original Petition filed under Section 482 Cr.P.C. praying to set aside the order passed by the learned XV Additional District and Sessions Judge, Chennai in Crl.M.P.No.528 of 2016 dated 21.02.2017 in S.C.No.495 of 2012.

For Petitioners : Mr.M.Krishnamoorthy

For Respondent : Mr.M.Mohammed Riyaz
Government Advocate (Crl. Side)

O R D E R

This petition has been filed seeking to set aside the order passed by the learned XV Additional District and Sessions Judge, Chennai in Crl.M.P.No.528 of 2016 dated 21.02.2017 in S.C.No.495 of 2012.

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

3.This petition has been filed against the dismissal of the petition seeking recall of P.W.1 for the purpose of cross-examination.

4.In the order in challenge, the Court below has relied on judgment of Apex Court in Vinod Kumar Vs. State of Punjab (Criminal Appeal No.554/12) particularly paragraph 41 therein. Guidelines, be they of the Apex Court or of this Court, have to be read without losing sight of the facts that attend the particular case.

5.In the instant case, it is seen that P.W.1 was examined on 06.10.2016 and the petition to recall such witness was moved shortly thereafter on 01.11.2016. Therefore, in the circumstances, the contention of the petitioners that the non-examination of P.W.1 on 06.10.2016 was owing to the defence counsel being un-well ought to have been considered. Courts below are not to view with suspicion every contention raised on behalf of the defence or see at every turn attempts to protract proceedings.

6.Petition shall stand allowed. Petitioners shall now be permitted to cross examine P.W.1.

7.This criminal original petition is accordingly allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

1.The XV Additional Sessions Judge,
Chennai.

2.The Inspector of Police,
H-5, New Washermenpet Police Station,
Chennai 600 081.

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3.The Public Prosecutor,
High Court of Madras,
Chennai.

+1cc to Mr.M.Krishnamoorthy,Advocate sr.23915

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sj(co)
ss(3/7/2017)

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