IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2017

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Crl.O.P.No.6790 of 2017
and
Crl.M.P.No.4974 of 2017

1. Duraisamy
2. Ayyavu
3. Boopathy
4. Baby
5. Arunagiri .. Petitioners/A1 to A5

Vs

State rep by Inspector of Police,
Kondalampatty Police Station,
Salem District.
Cr.No.60 of 2013 .. Respondent/Complainant

Petition filed under Section 482 of the Criminal Procedure Code, to set aside the order made in Crl.M.P.No.316 of 2017 dated 22.03.2017 in S.C.No.110 of 2015 on the file of the Sessions Judge, Mahila Court, Salem by allowing this Criminal Original Petition.

For Petitioners: Mr.S.Sivakumar
For Respondent : Mr.C.Emalias,
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed to set aside the order made in Crl.M.P.No.316 of 2017 dated 22.03.2017 in S.C.No.110 of 2015 on the file of the Sessions Judge, Mahila Court, Salem.

2.The petition filed by the petitioners under Section 311 of Cr.PC before the Trial Court to cross examine the witness P.W.11 was dismissed by the impugned order, on the ground that P.W.11 was sufficiently cross examined by the defence counsel and that the said petition was filed only to drag on the proceedings. Challenging the said order, the petitioners are before this Court.

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3.Mr.C.Emalias, learned Additional Public Prosecutor takes notice for the respondent.

4.This Court finds that the order passed by the learned Sessions Judge, Mahila Court, Salem, on 22.03.2017 is not a well-considered order, since after the cross-examination of P.W.11, three more additional witnesses were produced before the Court. Hence the petitioners' prayer for cross examination of PW.11 is a must. Reluctantly, the Trial Judge, did not consider the said submission, while dismissing the petition filed under Section 311 of Cr.PC. Though the power vested under Section 311 Cr.PC is discretionary in nature, the same has to be exercised while considering the specific allegations as well as submissions relating to cross examination of the witnesses. Under the circumstances, this Court is inclined to grant yet another opportunity to the petitioners so as to cross examine PW11 alone, which shall take place on 12.07.2017 and be completed on the same day. It is made clear that the Trial Court shall not entertain any petition under Section 311 Cr.PC by the petitioners and shall not grant any further adjournments, as far as the petition for cross-examination is concerned.

5.The Criminal Original Petition is disposed of accordingly. Consequently, the connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CS-CO)

True Copy

Sub-Assistant Registrar

gsk
To
1. The Sessions Judge,
   Mahila Court, Salem.
2. The Inspector of Police,
   Kondalampatty Police Station,
   Salem District.
3. The Public Prosecutor,
   Madras High Court,
   Chennai-600 104.

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