

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2017

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl.O.P.No.3893 of 2017

and

Crl.M.P.No.2898 of 2017

1. Duraimurugan

2. Kalimuthu Petitioners/Accused No.2 & 1

Vs

State by: The Sub Inspector of Police,
Sankari Police Station,
Salem District.

(Crime No.234 of 2008) Respondent/Complainant

Criminal Original Petition filed under Section 482
Cr.P.C. to call for the records in Crl.M.P.No.5549 of 2016 in
C.C.No.197 of 2009 dated 23.01.2017 on the file of the Judicial
Magistrate No.I, Sankari and set aside the same.

For Petitioners : Mr.B.Vasudevan
For respondent : Mr.C.Emalias,
Addl. Public Prosecutor

ORDER

The present petition has been filed challenging the
order passed by the Judicial Magistrate No.I, Sankari,
dismissing the application filed under Section 311 Cr.P.C. to
recall P.Ws.6 and 9 for the purpose of cross examination.

2. It is the case of the petitioners that the chief
examination of P.W.6 was over on 21.03.2016 and P.W.9 was
examined on 30.05.2016. At that time, the counsel for the
petitioners could not cross examine the witnesses and hence, he
has filed a petition for recalling the witnesses for the purpose
of cross examination and the same was dismissed on the ground
that the entire trial was over, all the prosecution witnesses
have been examined, and the matter is posted for questioning

under Section 313 Cr.P.C. Challenging the same, the petitioners have filed the present petition.

3. Heard the learned counsel appearing for the petitioners and learned Additional Public Prosecutor appearing for the respondent and perused the entire materials available on record including the impugned order.

4. Considering the facts and circumstances of the case and taking into consideration of the fact that since the petitioners' counsel was not able to cross examine the witnesses and in order to give an opportunity to the petitioners to cross-examine the witnesses, this Court is inclined to set aside the said order.

5. Accordingly, the order of learned Judicial Magistrate No.I, Sankari, dated 23.01.2017 made in C.M.P.No.5549 of 2016 in C.C.No.197 of 2009, is set aside and the trial court is directed to recall P.W.6 and P.W.9 on 10.03.2017 and the petitioners are directed to cross examine the said witnesses on the very same day itself. As the case is of the year 2009, the trial Court is directed to dispose of the case within a period of two months thereafter. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar (CS-III)

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Sub-Assistant Registrar

To

1. The Judicial Magistrate No.I,
Sankari.
 2. The Sub Inspector of Police,
Sankari Police Station,
Salem District.
 3. The Public Prosecutor,
High Court, Madras.
- +1 CC to Mr. B. Vasudevan, Advocate sr 12721(01/03/2017)

Cr1.O.P.No.3893 of 2017

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