

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2017

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Cr1.O.P.No.22046 of 2017

1.Muthukumar
2.Ramakumar
3.Udhayakumar

... Petitioners

Vs

The State
Rep. by Inspector of Police,
Saravanampatty Police Station,
Coimbatore District.

... Respondent

This criminal original petition filed under Section 482 Cr.P.C. to set aside the order passed in C.M.P.No.6197 of 2017 in C.C.No.376 of 2016 by the learned Judicial Magistrate No.II, Coimbatore dated 25.09.2017

For Petitioners: M/s.S.B.Viswanathan

For respondent : Mr.P.Govindarajan
Additional Public Prosecutor

ORDER

The present Criminal Original Petition has been filed challenging the order dismissing the petitioners' application to recall P.W.6.

2. The petitioners are accused in C.C.No.376 of 2016 pending on the file of the Judicial Magistrate NO.II, Coimbatore. After commencement of trial, the prosecution witnesses were examined, and P.W.6, a Doctor, was examined on 10.08.2017. On that day, since the counsel for the petitioners was held up in another Court, he was not able to cross examine the Doctor, and his evidence was closed on that day itself. Immediately, the petitioners filed an application under Section 311 Cr.P.C, to recall the above witness and the same was dismissed by the trial Court. Now, challenging the same, the present petition has been filed.

3. I have heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the respondent.

4. The learned counsel for the petitioner would submit that on 10.08.2017, P.W.6, was examined and due to some unavoidable circumstances, as the counsel was held up in another Court, he was not able to cross examine P.W.6 on that day. Immediately, the petitioner has filed the petition to recall the above witness, but the same was dismissed by the trial Court.

5. The learned Additional Public Prosecutor would contend that since P.W.6 is an official witness, he cannot be called to the Court frequently, and only due to the lethargic attitude of the petitioners, P.W.6 was not cross examined on that day.

6. Considering the facts and circumstances of the case and in order to prove their defence an opportunity should be given to the petitioners to cross examine the Doctor, according to the petitioners, who is a crucial witness in this case.

7. In the above circumstances, the order passed by the Court below is set-aside, and the Court below is directed to recall P.W.6 on **06.11.2017*** and on that day, the petitioners are directed to cross examine the witness. If the petitioners failed to cross examine P.W.6 on that day, the Court below can proceed with the trial without affording any further opportunity to the petitioners.

Sd/-
Assistant Registrar(CS-VIII)
dt/ 23/10/2017

amended as per the order of
this court made in CrI.OP.22046
of 2017 dated 30.10.2017 सत्यमेव जयते

Sd/-
Assistant Registrar(CS-VIII)
dt. 31.10.2017

//True Copy//

Sub Assistant Registrar

mrp

To

1. The Inspector of Police,
Saravanampatty Police Station,
Coimbatore District.

Substituted order already
despatched on 24.10.2017

2. The Public Prosecutor,
High Court, Madras.

3. The Judicial Magistrate No.II,
Coimbatore.

+1 cc to M/s.S.B.Viswanathan Advocate SR.76333

Cr1.O.P.No.22046 of 2017

CS-VIII

aa 23/10/2017

EU 31.10.2017



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